

Vol. II
TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1920

No. 66

**CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY
AND WABASH RAILWAY COMPANY, PETITIONERS,**

vs.

**DES MOINES UNION RAILWAY COMPANY, F. M. HUBBELL,
ET AL.**

No. 67

**DES MOINES UNION RAILWAY COMPANY, F. M. HUBBELL,
ET AL., PETITIONERS,**

vs.

**CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY
AND WABASH RAILWAY COMPANY.**

**ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT
OF APPEALS FOR THE EIGHTH CIRCUIT.**

PETITIONS FOR CERTIORARI FILED JANUARY 24, 1919.

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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1919.

No. 278.

CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY
AND WABASH RAILWAY COMPANY, PETITIONERS,

vs.

DES MOINES UNION RAILWAY COMPANY, F. M. HUBBELL,
ET AL.

No. 279.

DES MOINES UNION RAILWAY COMPANY, F. M. HUBBELL,
ET AL., PETITIONERS,

vs.

CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY
AND WABASH RAILWAY COMPANY.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT
OF APPEALS FOR THE EIGHTH CIRCUIT.

INDEX.

	Page.
Testimony for complainants.....	229
Testimony of Charles H. Hays.....	229
Exhibit S—Letter, O. D. Ashley, president, to F. M. Hubbell, August 15, 1890.....	264
Exhibit T—Letter, F. M. Hubbell to O. D. Ashley, president, August 19, 1890.....	265

	Page.
Stipulation as to documentary evidence introduced.....	267
Exhibit U—Letter, J. C. Otteson, secretary, to F. M. Hubbell, secretary, October 6, 1896.....	267
Exhibit V—Letter, F. M. Hubbell, secretary, to J. C. Otteson, secretary, October 9, 1896.....	268
Testimony of Horace Seely.....	269
Complainants' exhibits.....	272
W—Bill of Des Moines Union Ry. Co. to Wabash R. R. Co., December 31, 1889.....	272
X—Bill of Des Moines Union Ry. Co. to Wabash R. R. Co., January 31, 1890.....	273
Y—Bill of Des Moines Union Ry. Co. to Wabash R. R. Co., February 28, 1890.....	274
Z—Bill of Des Moines Union Ry. Co. to Wabash R. R. Co., May 31, 1890.....	274
AA—Bill of Des Moines Union Ry. Co. to Wabash R. R. Co., December 31, 1890.....	276
BB—Bill of Des Moines Union Ry. Co. to Wabash R. R. Co., January 31, 1891.....	279
CC—Bill of Des Moines Union Ry. Co. to Wabash R. R. Co., February 28, 1891.....	280
DD—Bill of Des Moines Union Ry. Co. to Wabash R. R. Co., February 28, 1891.....	280
EE—Bill of Des Moines Union Ry. Co. to Wabash R. R. Co., March 31, 1891.....	286
FF—Bill of Des Moines Union Ry. Co. to Wabash R. R. Co., March 31, 1891.....	286
GG—Bill of Des Moines Union Ry. Co. to Wabash R. R. Co., May 31, 1891.....	289
HH—Bill of Des Moines Union Ry. Co. to Wabash R. R. Co., May 31, 1891.....	289
II—Bill of Des Moines Union Ry. Co. to Wabash R. R. Co., April 30, 1891.....	290
JJ—Bill of Des Moines Union Ry. Co. to Wabash R. R. Co., April 30, 1891.....	290
KK—Bill of Des Moines Union Ry. Co. to Wabash R. R. Co., June 30, 1891.....	295
LL—Bill of Des Moines Union Ry. Co. to Wabash R. R. Co., June 30, 1891.....	296
MM—Bill of Des Moines Union Ry. Co. to Wabash R. R. Co., July 31, 1891.....	298
NN—Bill of Des Moines Union Ry. Co. to Wabash R. R. Co., July 31, 1891.....	298
OO—Bill of Des Moines Union Ry. Co. to Wabash R. R. Co., August 31, 1891.....	301
PP—Bill of Des Moines Union Ry. Co. to Wabash R. R. Co., August 31, 1891.....	302
QQ—Bill of Des Moines Union Ry. Co. to Wabash R. R. Co., September 30, 1891.....	304
RR—Bill of Des Moines Union Ry. Co. to Wabash R. R. Co., September 30, 1891.....	305

INDEX.

iii

Page.

SS—Bill of Des Moines Union Ry. Co. to Wabash R. R. Co., October 31, 1891.....	307
TT—Bill of Des Moines Union Ry. Co. to Wabash R. R. Co., October 31, 1891.....	308
UU—Bill of Des Moines Union Ry. Co. to Wabash R. R. Co., November 30, 1891.....	310
VV—Bill of Des Moines Union Ry. Co. to Wabash R. R. Co., November 30, 1891.....	311
Testimony of Edward B. Pryor.....	317
Complainants' exhibits.....	334
Minutes of meeting of board of directors of Des Moines Union Ry. Co., March 12, 1906, and resolution respecting surplus earnings and protest of Wabash and St. Paul Companies.....	334
Protest of St. Paul and Wabash Companies offered at meeting of board of directors of Des Moines Union Ry. Co., January 18, 1907.....	336
Protest of Wabash and St. Paul Companies filed with board of directors of Des Moines Union Ry. Co. at meeting held January 3, 1908.....	336
Letter—Horace Seeley, superintendent, to D. B. Howard, auditor, Wabash Ry. Co., March 2, 1892.....	338
Defendants' Exhibit—Letter, J. Ramsey, Jr., vice-president and general manager, Wabash R. R. Co., to F. C. Hubbell, president, Des Moines Union Ry. Co., August 26, 1896....	342
Testimony of Wells H. Blodgett.....	357
Complainants' exhibits.....	360
Letter—A. B. Cummins to Wells H. Blodgett, general solicitor, January 22, 1890.....	360
Declaration of trust, F. M. Hubbell to Des Moines & St. Louis R. R. Co. et al., March 11, 1881.....	363
Defendants' exhibits.....	371
Letter—Wells H. Blodgett to W. A. Park, January 11, 1897.....	371
Letter—Wells H. Blodgett to W. A. Parks, November 23, 1895.....	373
Telegram—Wells H. Blodgett to F. M. Hubbell, March 10, 1899.....	381
Letter—Wells H. Blodgett to F. M. Hubbell, March 11, 1899.....	381
Letter—Wells H. Blodgett to F. M. Hubbell, March 20, 1899.....	382
Letter—Wells H. Blodgett to F. M. Hubbell, March 23, 1899.....	384
Stipulation of counsel respecting complainants' exhibits.....	387
List of exhibits.....	388
Plaintiffs' exhibits.....	396
Exhibit 1—Contract between Wabash, St. Louis & Pacific Ry. Co. and J. S. Polk et al., December 8, 1880.....	396

	Page
Exhibit 2—Contract between Wabash, St. Louis & Pacific Ry. Co. and Des Moines Northwestern Ry. Co. and Narrow Gauge Construction Co., December 8, 1880	400
3—Articles of incorporation of Des Moines & St. Louis R. R. Co.	406
4—Contract between Des Moines & St. Louis Ry. Co. et al. and G. M. Dodge et al., January 2, 1882, ...	411
5—Proceedings had at meeting of board of directors of Des Moines Northwestern Ry. Co., December 9, 1884	415
5½ and 6—Proceedings had at first meeting of incorporators of Des Moines Union Ry. Co., December 10, 1884	416
Articles of incorporation of Des Moines Union Ry. Co.	420
7—Resolution adopted at stockholders' meeting of St. Louis, Des Moines & Northern Ry. Co., January 1, 1885	421
8—Proceedings had at meeting of stockholders of Des Moines Northwestern Ry. Co., January 1, 1885, ..	424
9—Proceedings had at meeting of stockholders of Des Moines & St. Louis R. R. Co., January 1, 1885, ...	428
10—Proceedings had at first meeting of board of directors of Des Moines Union Ry. Co., January 1, 1885, ..	432
11—Proceedings had at meeting of board of directors of St. Louis, Des Moines & Northern Ry. Co., November 5, 1887,	435
12—Proceedings had at meeting of board of directors of Des Moines & St. Louis R. R. Co., November 8, 1887	437
13—Notice of Des Moines & St. Louis R. R. Co. to Des Moines Union Ry. Co. of resolution authorizing transfer of certain property, November 8, 1887, ..	439
14—Notice of St. Louis, Des Moines & Northern Ry. Co. to Des Moines Union Ry. Co. of resolution authorizing transfer of certain property, November 8, 1887	441
15—Notice of Des Moines Northwestern Ry. Co. to Des Moines Union Ry. Co. of resolution authorizing transfer of certain property, November 8, 1887, ..	442
16—Ordinance of city of Des Moines granting certain right of way, etc., to Des Moines & St. Louis R. R. Co., March 22, 1884	445
17—Deed, James F. How, trustee, to Des Moines Union Ry. Co., November 19, 1887	446
18—Deed, James F. How and wife to Des Moines Union Ry. Co., December 10, 1887	448
19—Deed, James F. How, trustee, to Des Moines Union Ry. Co., April 28, 1888	451

Exhibit 20—Deed, G. M. Dodge and wife to Des Moines Union Ry. Co., November 7, 1887.....	453
21 Deed, St. Louis, Des Moines & Northern Ry. Co. to Des Moines Union Ry. Co., November 7, 1887.....	455
22 Deed, Des Moines & St. Louis R. R. Co. to Des Moines Union Ry. Co., February 21, 1888.....	457
23 Mortgage of Des Moines Union Ry. Co. to Central Trust Co. of New York, November 1, 1887.....	459
Form of first mortgage bond of Des Moines Union Ry. Co., \$1,000	461
Form of interest coupon.....	462
Form of trustee's certificate.....	462
Exhibit 24—Proceedings had at annual meeting of stockholders of Des Moines & Northwestern Ry. Co., January 2, 1890.....	474
25—Proceedings had at meeting of stockholders of Des Moines & St. Louis R. R. Co., January 3, 1890, ..	475
26—Proceedings had at stockholders' meeting of Des Moines Union Ry. Co., March 31, 1888.....	476
27 Contract between Des Moines Union Ry. Co. and Des Moines & St. Louis R. R. Co. et al., May 10, 1889	479
28—Proceedings had at stockholders' meeting of Des Moines Union Ry. Co., April 8, 1890.....	488
Articles of incorporation amended.....	489
29—Proceedings had at meeting of directors of Des Moines Union Ry. Co., February 11, 1891, respecting surplus earnings.....	497
30—Proceedings had at meeting of board of directors of Des Moines Union Ry. Co., January 7, 1892, respecting surplus earnings.....	498
31 Stipulation of counsel respecting annual report of Des Moines Union Ry. Co. to executive council of State of Iowa for purpose of assessment of property for taxation for the year 1888.....	499
32 Stipulation of counsel respecting annual report of Des Moines Union Ry. Co. to executive council of State of Iowa for purpose of assessment of property for taxation for the year 1889.....	502
33—Stipulation of counsel respecting annual report of Des Moines Union Ry. Co. to executive council of State of Iowa for purpose of assessment of property for taxation for the year 1890.....	502
34 Stipulation of counsel respecting annual report of Des Moines Union Ry. Co. to executive council of State of Iowa for purpose of assessment of property for taxation for the year ending January 1, 1892	503

	Page.
Exhibit 35—Stipulation of counsel respecting annual report of Des Moines Union Ry. Co. to executive council of State of Iowa for purpose of assessment of property for taxation for the year ending January 1, 1893	504
36—Stipulation of counsel respecting annual report of Des Moines Union Ry. Co. to executive council of State of Iowa for purpose of assessment of property for taxation for the year ending January 1, 1894	505
37—Contract of ratification between Des Moines Union Ry. Co., Wabash R. R. Co., and Des Moines Northern & Western R. R. Co., July 31, 1897.....	506
38—Mortgage, Des Moines & St. Louis R. R. Co. to Central Trust Co. of New York et al., trustees, December 1, 1881.....	509
39—Release of deed, Central Trust Co. of n.l., trustees, to Des Moines & St. Louis R. R. Co., November 13, 1895	517
40—Release, Des Moines & St. Louis R. R. Co. to Wabash, St. Louis & Pacific Ry. Co., March 1, 1882	521
41—Consent of Des Moines & St. Louis R. R. Co. to cancellation of lease to Wabash, St. Louis & Pacific Ry. Co., August 3, 1886.....	527
42—Proceedings had at stockholders' meeting of Des Moines & St. Louis R. R. Co. authorizing conveyance of railroad to Wabash R. R. Co., February 3, 1899.....	530
43—Proceedings had at meeting of directors of Des Moines & St. Louis R. Co. authorizing conveyance of railroad to Wabash R. R. Co., March 16, 1899	531
44—Deed, Des Moines & St. Louis R. R. Co. to Wabash R. R. Co., January 1, 1899.....	533
45—Deed, Wabash, St. Louis & Pacific Ry. Co. to James F. Joy et al. as purchasing committee, etc., April 25, 1888.....	536
46—Deed of general assessment from Wabash purchasing committee to Wabash R. R. Co., August 18, 1898	543
Schedule A—List of real estate and personal property in hands of Wabash purchasing committee.....	550
Exhibit 47—Mortgage, St. Louis, Des Moines & Northern Ry. Co. to Mercantile Trust Co., trustee, August 1, 1881	552
Form of first mortgage bond of St. Louis, Des Moines & Northern Ry. Co., \$1,000.00.....	553
Form of interest coupons.....	554
Form of trustee's certificate.....	554

Exhibit 48—Bill of foreclosure of Mercantile Trust Co. against St. Louis, Des Moines & Northern Ry. Co., in U. S. circuit court, southern district of Iowa.....	563
Mortgage, St. Louis, Des Moines & Northern Ry. Co. to Mercantile Trust Co. as trustee, August 1, 1881.....	567
Exhibit 49—Decree of foreclosure in case of Mercantile Trust Co., vs. St. Louis, Des Moines & Northern Ry. Co., in U. S. circuit court, southern district of Iowa, October 15, 1889.....	578
Consent of St. Louis, Des Moines & Northern Ry. Co. to entry of decree of foreclosure.....	583
Exhibit 50—Report of sale under foreclosure decree in case of Mercantile Trust Co., vs. St. Louis, Des Moines & Northern Ry. Co., in U. S. circuit court, southern district of Iowa.....	584
Exhibit A—Affidavit of publication of notice of sale and notice	586
Exhibit B—Notice of sale with admission of service.....	587
Exhibit 51—Deed, George F. Henry, commissioner, to Solon Humphreys and J. T. Granger, November 22, 1889.....	589
52—Order of U. S. circuit court, southern district of Iowa, confirming sale in case of Mercantile Trust Co., vs. St. Louis, Des Moines & Northern Ry. Co., November 23, 1889.....	591
53—Articles of incorporation of Des Moines & Northern Ry. Co.....	592
54—Deed, Solon Humphreys and J. T. Granger to Des Moines & Northern Ry. Co., November 23, 1889.....	596
55—Proceedings of board of directors of St. Louis, Des Moines & Northern Ry. Co. relative to conveyance of certain property to Des Moines & Northwestern Ry. Co., January 23, 1882.....	599
56—Proceedings had at meeting of board of directors of Des Moines Northwestern Ry. Co., January 23, 1882	599
57—Deed, St. Louis, Des Moines & Northern Ry. Co. to Des Moines Northwestern Ry. Co., January 23, 1882	600
58—Mortgage, Des Moines Northwestern Ry. Co. to Central Trust Co. of New York et al., trustees, February 28, 1881.....	605
59—Decree of foreclosure in case of Central Trust Co. et al., trustees, vs. Des Moines Northwestern Ry. Co. et al., in U. S. circuit court, southern district of Iowa, November 11, 1887.....	609
60—Order of U. S. circuit court, district of Iowa, approving commissioner's report of sale and deed in case of Central Trust Co. et al. vs. Des Moines Northwestern Ry. Co. et al., June 2, 1888.....	613

	Page
Deed, George F. Henry, commissioner, to Polk & Huddell, May 19, 1888.....	612
Exhibit 61 Articles of incorporation of Des Moines and North- western Ry. Co.....	615
62 Deed, Polk & Huddell to Des Moines & Northwest- ern Ry. Co., December 24, 1887.....	619
63 Proceedings had at stockholders' meeting of Des Moines & Northwestern Ry. Co., August 17, 1890.....	621
64 Articles of consolidation and incorporation of Des Moines Northern & Western Ry. Co.....	623
65 Mortgage, Des Moines Northern & Western Ry. Co. to Metropolitan Trust Co. of New York, December 15, 1890.....	625
Form of first mortgage bond, 81000000	626
Form of interest coupon.....	626
Form of trustee's certificate.....	626
Exhibit 66 Decree of foreclosure in case of Metropolitan Trust Co., trustee vs. Des Moines Northern & Western Ry. Co., November 7, 1894.....	627
67 Report of sale in case of Metropolitan Trust Co., trustee, vs. Des Moines Northern & Western Ry. Co.	631
68 Order confirming report of sale under foreclosure decree in the case of Metropolitan Trust Co., trustee, vs. Des Moines Northern & Western Ry. Co., February 7, 1895.....	633
69 Commissioner's deed to G. M. Dodge et al., purchas- ing committee, February 8, 1895.....	634
70 Articles of incorporation of Des Moines Northern & Western R. R. Co.....	637
71 Deed, G. M. Dodge et al., purchasing committee, to Des Moines Northern & Western R. R. Co., Febru- ary 23, 1895.....	642
72 Proceedings had at stockholders' meeting of Des Moines Northern & Western R. R. Co., January 5, 1899.....	646
73 Proceedings had at special meeting of board of directors of Des Moines Northern & Western R. R. Co., April 24, 1899.....	647
74 Deed, Des Moines Northern & Western R. R. Co. to Chicago, Milwaukee & St. Paul Ry. Co., May 1, 1899.....	651
75 Proceedings had at stockholders' meeting of Des Moines Northern & Western R. R. Co., June 12, 1897.....	658
76 Quitclaim deed, Des Moines Northern & Western R. R. Co. to Chicago, Milwaukee & St. Paul Ry. Co., June 19, 1897.....	659
77 Deed, F. M. Huddell and wife to F. M. Huddell et al., trustees of Huddell estate, December 31, 1895.....	664

INDEX.

ix

	Page.
Exhibit Schedule A—Real property; not to be sold.....	699
Schedule B—Real property; which may be sold.....	700
Schedule C—Personal property.....	706
Exhibit 78—Deed, Mercantile Trust Co. of New York, trustee, to James F. Joy et al., trustees, October 16, 1886.,	706
Exhibit 79—Statement of stock certificates issued by Des Moines Union Ry. Co.....	711
Stipulation respecting use of terminal property by Des Moines Northwestern Ry. Co., St. Louis, Des Moines & Northern Ry. Co., and Des Moines & St. Louis R. R. Co.; also respecting capital stock of Des Moines Northern & Western R. R. Co., and as to report of St. Louis, Des Moines & Northern Ry. Co., of the year ending June 30, 1882.....	713
Stipulation respecting annual reports of Des Moines Union Ry. Co. to executive council of State of Iowa for purpose of assessment of property for taxation, etc.....	719
Further testimony for complainants.....	725
Amended and substituted articles of incorporation of Des Moines Northwestern Ry. Co.....	725
Admission that Des Moines Northwestern Ry. Co. owned and was operating a narrow gauge railroad, December 23, 1880.,	729
Articles of incorporation of St. Louis, Des Moines & Northern Ry. Co.....	729
Testimony from transcript of evidence in case of Chicago, M. & St. P. Ry. Co. vs. Des Moines Union Ry. Co., in district court of Polk County, Iowa.....	732
Testimony of Charles F. Leuth.....	732
A. H. Londermilk.....	742
M. A. Hills.....	756
C. W. Gough.....	769
E. W. Raymond.....	774
G. C. Wise.....	780
James Saguin.....	783
Ed Mellin.....	786
Stipulation of counsel as to interposition of objections to testimony of Charles Leuth et al.....	788
Stipulation of facts.....	788
Notice of election in Des Moines township, Boone County, Iowa, upon question of levying tax for purpose of aiding the St. Louis, Des Moines & Northern Ry. Co. in constructing its rail- way, etc.....	789
Certificate of township trustees to auditor of Boone County, Iowa, as to result of election, etc.....	792
Memorandum of special election in Worth township, Boone County, Iowa, upon question of levy of tax in aid of railway construction, etc.....	795
Memorandum of special election in Douglas township, Boone County, Iowa, upon question of levy of tax in aid of railway construction, etc.....	798

INDEX.

	Page
Acceptance by St. Louis, Des Moines & Northern Ry. Co. of taxes voted in Des Moines, Worth and Douglas townships, Boone County, Iowa, etc.....	796
Memorandum of taxes levied in aid of construction of railway..	797
Notice of election in Jefferson township, Greene County, Iowa, upon question of levy of tax in aid of railway construction..	798
Certificate to auditor of Greene County, Iowa, as to result of election in Jefferson township, etc.....	800
Notice of election in Franklin township, Greene County, Iowa, upon question of levy of tax in aid of railway construction..	802
Certificate to auditor of Greene County, Iowa, as to result of election in Franklin township, etc.....	804
Notice of election in Highland township, Greene County, Iowa, upon question of levy of tax in aid of railway construction..	806
Certificate to auditor of Greene County, Iowa, as to result of election in Highland township, etc.....	808
Notice of election in Grant township, Greene County, Iowa, upon question of levy of tax in aid of railway construction.....	809
Certificate to auditor of Greene County, Iowa, as to result of election in Grant township, etc.....	811
Notice of election in Logan township, Calhoun County, Iowa, upon question of levy of tax in aid of railway construction..	814
Certificate to auditor of Calhoun County, Iowa, as to result of election in Logan township, etc.....	816
Memorandum as to holding of special election in Twin Lakes, Williams, Butler, and Garfield townships, in Calhoun County, Iowa, upon question of levy of tax to aid in railway construction, etc.....	818
Stipulation as to taking of deposition of E. C. Kinney.....	820
Further testimony for complainants.....	821
Deposition of Edward C. Kinney.....	821
Certificate of notary to deposition.....	823
Vouchers of Narrow Gauge Ry. Construction Co.....	825
Exhibit 80. Contract between F. M. Huddell et al. and Chicago, Milwaukee & St. Paul Ry. Co., March 15, 1881.....	828
Stipulation for taking of testimony of Mark L. Mitchell et al.....	837
Further testimony for complainants.....	838
Testimony of Mark L. Mitchell.....	838
William R. Moorehead.....	840
W. L. Finneman.....	842
Commissioner's certificate of testimony of Mark L. Mitchell et al.	847
Articles of incorporation of Des Moines Terminal Co.....	847
Admission of respondents as to letter of James F. How to George S. Grover, March 25, 1881.....	849
Complainants' Exhibit 94 Letter, James F. How to George S. Grover, March 25, 1881.....	850

IN THE
Circuit Court of the United States

SOUTHERN DISTRICT, IOWA,

CENTRAL DIVISION.

2449.—In Equity.

THE CHICAGO, MILWAUKEE & ST. PAUL RAILWAY
COMPANY AND THE WABASH RAILROAD COM-
PANY, PLAINTIFFS,

VS.

THE DES MOINES UNION RAILWAY COMPANY, FRED-
ERICK M. HUBBELL, FREDERICK C. HUBBELL
AND F. M. HUBBELL & SON, DEFENDANTS.

TESTIMONY FOR COMPLAINANTS, WITH AN INDEX.



TESTIMONY FOR COMPLAINANTS.

In the Circuit Court of the United States for the Southern
District of Iowa, Central Division.

The Chicago, Milwaukee & St. Paul Railway Company and
the Wabash Railroad Company, Complainants,

No. 2449. vs. In Equity.

The Des Moines Union Railway Company, Frederick M. Hub-
bell, Frederick C. Hubbell and F. M. Hubbell & Son,
Defendants.

Pursuant to the annexed stipulation in the above entitled cause, providing for taking testimony on behalf of complainants, and the further agreement between counsel for complainants and defendants that I begin the taking of testimony on this day, November 30th, 1909, in Room 53 in the Western Union Building, at 195 Broadway, New York City, in the State of New York, I appeared at the same time and place to take testimony, and thereupon complainants appeared by their counsel, J. L. Minnis, Esq., and defendants appeared by their counsel, Messrs. Guernsey, Parker & Miller, and answered ready to proceed with the taking of the evidence. Thereupon the complainants introduced as a witness

CHARLES M. HAYS, who, after being duly sworn by H. L. Utter, a Notary Public duly commissioned and qualified under the laws of New York to administer oaths at the time and place aforesaid, testified as follows:

Direct-examination

By Mr. Minnis:

Q. State your name, occupation, and place of residence?

A. Charles Melville Hays, Second Vice-President and General Manager of the Grand Trunk Railway of Canada, the Montreal & Quebec, President of the Grand Trunk & Pacific, and a whole lot of other companies.

Q. If you were connected with the Wabash, St. Louis & Pacific Railway Company, the Wabash Western Railroad Company, or the Wabash Railroad Company, please state when you first became connected with either of those companies and in what capacity, and what official position you held in those companies, or either of them?

A. I first went with the Wabash, St. Louis & Pacific at the time it was leased by the Missouri Pacific in the fall of 1883, and remained in the employ of that company until the time of the appointment of the receiver, May 29th, 1884, of the

Wabash, St. Louis & Pacific, at which time A. A. Talmage was appointed general manager and I was appointed his assistant; then I staid with them under the receivership until the time of the foreclosure and the reorganization of the Wabash Western Railway operating the lines remaining controlled by the Wabash, St. Louis & Pacific west of the Mississippi River, and operating, also, at the same time, the line between Chicago and Detroit. I remained with Mr. Talmage in that capacity as his assistant, or secretary, more properly speaking, until 1885 or 1886, I am not positive which, when I was made Assistant General Manager of the Wabash Western Railway, and then remained in that capacity until July, 1887, when, upon Mr. Talmage's death, I was made General Manager of the Wabash Western Railway and of the line between Detroit and Chicago, being operated on behalf of the Purchasing Committee. I remained in that capacity until the consolidation of the Wabash Western with the lines east in 1889, when I was made general manager of the consolidated company. I remained in that position until the spring of 1894, when I was also made vice-president in addition to the position of general manager of the consolidated property. I remained in that position until January 1st, 1896, when I left the Wabash to go to the Grand Trunk Railway, and I have been with the Grand Trunk Railway ever since, with the exception of a year, when I served as president of the Southern Pacific, the year 1901.

Q. I will ask you to state whether or not you were assistant to the General Manager of the Wabash properties during the receivership of those properties?

A. Yes, up to the time of the separation of the two portions of the system, the eastern and western lines.

Q. When you first became general manager of the properties of the company, either for the receivers or the company, what properties did you have charge of?

A. Well, the receivers, of course, had been discharged so far as the lines west of the Mississippi River were concerned, and they had been reorganized under the title of the Wabash Western Railway Company, and I was appointed first assistant general manager first, and later on, on the death of A. A. Talmage, was appointed general manager of the Wabash Western Railway.

Q. What lines did that company operate?

A. That company at that time operated the line between St. Louis and Kansas City, St. Louis and Des Moines, St. Louis and Columbia, two or three branches in the State of Missouri.

Q. When you became general manager who represented the Wabash interest at Des Moines, Iowa?

Defendants' counsel objects to the question as calling for a conclusion and as incompetent.

A. Mr. F. M. Hubbell.

Q. In what way did F. M. Hubbell at that time represent the Wabash interests and property?

Defendants' counsel makes the same objection.

A. Mr. Hubbell had general charge of all matters in connection with the Wabash interests at Des Moines.

Q. If you recall the purchase of property for terminals at Des Moines, and the development of terminals at that point for the Des Moines & St. Louis Railway Company, the Wabash, and other companies, state who had active charge of that matter for the Des Moines & St. Louis, and the Wabash?

Defendants' counsel objects to the question for the same reasons.

A. Mr. F. M. Hubbell.

Q. You have stated that at the time you became general manager the company had a line extending to Des Moines, Iowa, what was the name of the company that owned that line?

A. The line from Albia to Des Moines was owned by the Des Moines & St. Louis Railway.

Q. Was that line owned by the Des Moines & St. Louis Railway operated as a Wabash property during the time you were vice-president and general manager? A. Yes sir.

Q. Do you recall the formation of the Des Moines Union Railway Company? A. Yes sir.

Q. Who represented the Wabash interests in the development of the terminals at Des Moines, and the getting up of the corporation?

Defendants' counsel objects to the question as incompetent because it calls for an opinion of the witness and not a statement of any facts.

A. Mr. Hubbell.

Q. Were you, during the time you were connected with the Wabash properties, and in speaking of the Wabash properties I include the Des Moines & St. Louis Railroad, or the railroad owned by that company, familiar with the contract of date January 2d, 1882, entered into between the Des Moines & St. Louis Railway Company, the Des Moines & Northwestern Railroad Company, the St. Louis, Des Moines & Northern Railway Company, James F. How, and Grenville M. Dodge, which contract was also approved by the Wabash, St. Louis & Pacific Railway Company, and a copy of which is set out in com-

plainants' bill in this case as Exhibit A, which I show you now (handing paper to witness)?

A. Yes sir, I am familiar with it.

Q. Were you at any time, while you were connected with the Wabash properties as general manager, or otherwise, authorized by the companies, or any of them, owning the Wabash property, including the Des Moines & St. Louis Railway Company, to perform any act that would affect or alter or change the property interests or rights of the Des Moines & St. Louis Railway Company, or any of the other companies above mentioned, in the terminal properties at Des Moines, Iowa?

Defendants' counsel objects to the question for the same reason, because it does not call for any fact, but simply calls for the conclusion of the witness as to the matter about which the inquiry is made.

A. No sir.

Q. Did you at any time, while you were connected with the Wabash properties, hear, at any meeting of the boards of directors of any of the companies owning or operating the Wabash properties, or at a meeting of the board of directors of the Des Moines & St. Louis Railroad Company, or in any conference or talk you may have had at any time with any of the officers of either of those companies, any suggestion, statement or discussion with respect to either of those companies changing or affecting in any way their property rights and interests in the Des Moines terminal property, as set forth in the contract of January 2d, 1882?

Defendants' counsel objects to the question as incompetent because it calls for a conclusion of the witness and does not call for any specific facts with reference to matters as to which inquiry is made.

A. Not to my recollection.

Q. In saying in your answers that Mr. Hubbell represented the Wabash interests at Des Moines, you mean the defendant, F. M. Hubbell? A. Mr. F. M. Hubbell, yes sir.

Q. Did the defendant F. M. Hubbell, or the defendant F. C. Hubbell, or anyone representing them, or either of them, or the firm of Hubbell & Son, during the time you were connected with the Wabash properties say anything to you with respect to the advisability of the companies owning the Wabash properties, or any of them, changing their relationship and their rights to the terminal property at Des Moines as set forth in the contract of January 22nd, 1882, or their relations to the Des Moines Union Railway Company?

Defendants' counsel makes the same objection to the question, and objects further because it does not call for any specific conversation with any person, that it simply calls for the conclusion of the witness as to the substance of conversations which he may have had.

A. Not to my recollection.

Q. Did you have any conversation with them on that subject at all?

Defendants' counsel makes the same objection.

A. No sir.

Q. The minute books or record books of the Des Moines Union Railway Company recite that you attended a meeting of the stockholders of that company at Des Moines, Iowa, on the 8th day of April, 1890; do you recall attending such meeting? A. No sir.

Q. Did you subscribe for, or purchase any stock of the Des Moines Union Railway Co.? A. No sir.

Q. What purport to be the minutes of a meeting of the stockholders of the Des Moines Union Railway Co. held on the 8th day of April, 1890, recite that certain amendments were adopted to the articles of incorporation or association of the Des Moines Union Railway Co., and that you proposed some of those amendments; please state what, if anything, you did in connection with that matter?

A. I have now no recollection of doing anything. I recollect in a general way of attending meetings of the directors of the Des Moines Union and taking such action as was laid before us that was necessary to be taken, but this action was generally in pursuance of what I supposed to be a plan carried out under which I was only there to vote upon and consummate, and if I voted it was in accordance with that plan submitted to me as being supposed to be the thing to do.

Q. Who submitted those plans, and on whom, if anybody, did you rely with respect to the matters that were passed upon by the board of the Des Moines Union Railway Co.?

Defendants' counsel objects to the question as irrelevant, immaterial and incompetent.

A. Well, we regarded Mr. Hubbell as running the whole thing up there, and always considered it a Hubbell concern all the way through.

Q. It appears on the face of what is alleged to be an amended article of association or incorporation of the Des Moines Union Railway Co. that you signed and acknowledged such amended articles; please state your knowledge or recollection with respect to that matter?

A. I have now no definite recollection in regard to the matter.

Q. You have stated that Mr. F. M. Hubbell was in charge of Wabash matters at Des Moines; I will ask you to state whether in your transactions in connection with the Des Moines terminals and the Des Moines Union Railway Co., Mr. Hubbell purported to act for and on behalf of the Wabash properties and other railroads interested in the terminal property, or for and on behalf of himself as an individual?

Defendants' counsel objects to the question because it calls for a conclusion of the witness of the actions of Mr. Hubbell and does not call for what Mr. Hubbell did or said.

A. I presumed that he was acting for the railways as a whole, the Des Moines & St. Louis and other interests involved.

Defendants' counsel moves to strike out the answer of the witness for the reasons urged in the objection to the question, and for the further reason that it states the presumption of the witness.

Q. What was your understanding with respect to whether he was acting in his own behalf or as a representative of the railway companies interested in the terminal?

Defendants' counsel objects to the question for the reasons urged in the objection to the previous question, and in the motion to strike out.

A. I knew Mr. Hubbell had charge of the whole affair from its inception and in connection with the construction of the Des Moines & St. Louis, and the getting together of the companies in a terminal arrangement, and considered him as knowing more about it than anybody else.

Q. Whom did he do these things for?

Defendants' counsel makes the same objection.

A. For the companies interested in the terminal property, the Des Moines & St. Louis, the Des Moines & Northwestern and the St. Louis, Des Moines & Northern.

Q. Did he at any time claim to be acting for himself as an individual in these matters?

Defendants' counsel makes the same objection.

A. No sir.

Q. If you signed the alleged amended articles or incorporation or association of the Des Moines Union Railway Co., please state whether you understood that by so doing you were in any wise affecting or changing the rights of the railroad

companies you represented in the terminal property at Des Moines, Iowa, as secured to them by the contract of January 2nd, 1882?

Defendants' counsel objects to the question as calling for a conclusion and as incompetent for any purpose.

A. I assumed that I was acting in the capacity of a director to carry out a plan agreed upon by the property and that my action was merely formal.

Q. Did you understand that by any act you performed, whether in signing the amended articles or otherwise, that you were affecting the rights secured to the Wabash properties, which you represented by the contract of January 2nd, 1882?

Defendants' counsel makes the same objection.

A. I certainly never thought I was parting with any of the rights of the Wabash Company in any action taken.

Q. It is stated by the defendants in this case in paragraph 25 of their answer, as follows: "These respondents admit that the Des Moines Union Railway Co. and these respondents as stockholders in the said company have claimed and asserted ever since the Des Moines Union Railway Co. acquired the said terminal property as hereinbefore set out, that it was the owner of the same and had all of the rights in that property which are incident to or arose out of such ownership and aver that prior to the commencement of this suit, its said claims of ownership were acquiesced in by the complainants and their predecessors, and that prior to the commencement of this suit no claim had ever been made by any one under the said contract of 1882 after the terminal property in question was conveyed to the Des Moines Union Railway Co. as hereinbefore set out. These respondents further admit that they claim and assert that the only rights of complainants in this said terminal property are their rights under the contracts, Exhibits P and R, and on the expiration of the said contracts, the complainants will not have the right to use the said terminal property except upon reasonable terms and conditions and upon payment by them of a reasonable compensation for the rights which may be granted to them under contracts which may then be made with the Des Moines Union Railway Co.;" the contracts referred to as Exhibits P and R, are the contracts of date May 10th, 1889, and July 31st, 1897, being contracts with respect to the operation of the terminal property; now, I will ask you whether you ever heard the Hubbells or anyone else make such claim of ownership as stated in that part of the answer just read to you while you were connected with the Wabash properties?

A. Not to my recollection.

Q. Was there at any time any discussion between you or in your presence, or any conversation, wherein either of the defendants Hubbells set up any claim adverse to the interests of the Wabash Companies and other railroad companies that were using the Des Moines terminals?

Defendants' counsel states that he makes the same objection to the question and also objects because it calls for a conclusion of the witness, and not for a specific statement of facts, that it is incompetent.

A. I don't recall any.

Q. Do you think it likely that if they had set up such a claim, that they did not represent the Wabash interests, but that they were acting for themselves, that you would have known of it?

Defendants' counsel objects to the question as clearly incompetent, as asking for a conclusion of the witness, and asking for a pure matter of speculation.

A. I think it would have impressed itself upon me.

Q. The record book or the minutes of the Des Moines Union Railway show, in or about the month of May, 1888, being about the time you began the operation of the Des Moines terminals in the name of the Des Moines Union Railway Company, that a resolution was adopted by the board of directors of the Des Moines Union Railway Co. declaring that the operating expenses, taxes, and interests on bonds, then or thereafter issued, after deducting amounts received from other sources for rentals, be paid pro rata on a wheelage basis by the three railroad companies then using such terminals, and that such payments, including interest, shall be made monthly; now, do you know how the funds derived from rentals of property and handling and switching cars for others were distributed by the Des Moines Union Railway Co. after the passage of that resolution?

A. Up to the time of my leaving the property, my recollection is, they were credited on the expenses, the operation and maintenance of the property.

Q. On the bills rendered against the companies?

A. The bills against the respective proprietary lines.

Q. The minute books or records of the Des Moines Union Railway Co. show that a resolution was passed on or about the 11th day of February, 1891, as follows: "It is ordered that the rents collected for the use of the Company's real estate and the switching charges paid in be credited upon the bills of the different tenant companies occupying this company's

terminals, giving to each company its share ascertained by wheelage;" please state what was done with the revenue arising from switching done for other roads and from rentals received from other roads and for property, pursuant to that resolution, if you recollect?

A. I understand it was credited in the bills against the proprietary lines for their proportion of expense and maintenance, and operation of the property.

Q. Do you remember the passage of that resolution?

A. In a general way, yes sir.

Q. Could you state the circumstances or reasons for passing it?

Defendants' counsel objects to the question as irrelevant and immaterial.

A. My recollection is it was done as the usual method of disposing of earnings of properties in which the roads had a common interest.

Q. It appears from the record books or minutes of the Des Moines Union Railway Company that another resolution was passed on or about the 7th day of January, 1892, which I will now read to you: "Whereas, this company is in need of a cash capital with which to purchase supplies and pay current bills which come in before it receives its monthly revenue from the tenant companies, therefore, be it resolved, that until the further action of the board the sums received as rent of real estate and all switching charges shall not be credited upon the accounts of the tenant companies, but shall be used for the aforesaid purpose"; if you recall, please state the reasons for and the circumstances surrounding the adoption of that resolution?

Defendants' counsel makes the same objection.

A. My recollection is our superintendent, Mr. Wagner, or Mr. Seeley, I forget which one was superintendent at that time, complained of having no funds with which to carry on the current expenses, and we agreed that was as simple a way of putting him in funds as any we could adopt, as we did frequently in terminal companies, allowed them to accumulate funds to get working capital, and we followed that in this case.

Q. That is, the working capital was to meet the current expenses?

A. Yes sir, it was the equivalent of a contribution from each of the roads to the same extent, the terminal retaining it and utilizing it as a fund for these current expenses.

Cross-Examination

By Mr. Guernsey:

Q. I want to get these dates clearly in my mind before I begin. Now, when were you first connected with the Des Moines Union? A. As a director of the Des Moines Union?

Q. In such a way that you were familiar with the transaction of its affairs?

A. My first familiarity with the Des Moines Union by direct connection was in 1887.

Q. Now, when did you say you first became connected with one of the Wabash companies?

A. I went with the old Wabash, St. Louis & Pacific before the receivership in 1883.

Q. How long before 1883?

A. I think it was—well, the Wabash, St. Louis & Pacific was being operated by the Missouri Pacific, I have forgotten what time they took it over, I was with the Missouri Pacific when they took over the operation of the Wabash, St. Louis & Pacific, and I staid with them in that capacity until the Wabash, St. Louis & Pacific was put in the hands of a receiver, which was May 29th, 1884, and then the Missouri Pacific and Wabash were separated.

Q. I want to get, if I can, clearly, the date of your first connection with the Wabash, that is, in such a way that you were brought into touch with these matters?

A. I think I may very truthfully say from the date of my connection, because as secretary and assistant to the general manager, Mr. Talmage, the bills and matters pertaining to the operation of all parts of the Wabash, St. Louis & Pacific came to me.

Q. Your first connection with the Wabash, as near as you can state it now, was in May, 1883? A. Yes, sir.

Q. And you were then the secretary to the general manager? A. A. A. Talmage, yes sir.

Q. And you continued to occupy that position until you became assistant general manager, and on Mr. Talmage's death you succeeded him as general manager? A. Yes sir.

Q. And when was that? A. That was in July, 1887.

Q. Now, in the mean time the lines west of the Mississippi River had been sold under foreclosure proceedings?

A. Yes sir.

Q. And the Wabash Western Railway was organized to take over that property? A. Yes, sir.

Q. And the Wabash Western took over the property sometime in 1886? A. I have forgotten just the date.

Q. April 1st, 1887, Mr. Pryor says?

A. We has probably got it right.

Q. Then you spoke about the consolidated property, do you mean the Wabash Railroad Company?

A. Yes sir, that was consolidated in 1889.

Q. Now, when was this terminal property in Des Moines acquired?

A. Previous to my connection with the road I think it had been acquired.

Q. So that you have no personal knowledge as to what took place in connection with the acquisition of this property?

A. No sir.

Q. And you don't know what, if anything, Mr. F. M. Hubbell had to do with it? A. No.

Q. Of your personal knowledge? A. No.

Q. Now, this contract of January 2nd, 1882, was made prior to your connection with the Wabash Company?

A. Yes sir.

Q. So that you have no personal knowledge with reference to the matters that led up to that? A. No sir.

Q. Your personal knowledge could not begin earlier than May, 1883? A. No sir.

Q. And you began to assume the responsibility in July, 1887, probably? A. Yes sir.

Q. Mr. Minnis asked you, I think, if I got it correctly, "Who did he do these things for", referring to Mr. Hubbell; now, what things did you have in mind when you answered that question?

A. I had in mind the organization and conduct of the whole affair, we regarded Mr. Hubbell as the whole thing up there.

Q. I want something concrete, tell us some one thing that Mr. Hubbell did that you had in mind in answering that question? A. The preparation of the agreements—

Q. Pardon me for interrupting you, what agreement?

A. Covering the Des Moines Union.

Q. What agreement did Mr. Hubbell prepare?

A. The agreement of 1882.

Q. That was before your day? A. Yes.

Q. So you don't know anything about that personally, and that, as a matter of fact, was prepared here in New York, wasn't it? A. I don't know.

Q. Now, tell me one agreement that you do know of that Mr. Hubbell made?

A. The form in which these matters generally came before us was this—

Q. I beg your pardon, Mr. Hays, but please confine yourself to a direct answer to my question, I do not want to get in any controversy with you, but I do want to hold you down to my questions; now, tell us, if you can, one specific agreement that Mr. Hubbell prepared?

A. When, you say "prepared", do you mean wrote himself?

Q. I mean in the sense in which you use the word, drawing it?

A. What I meant was he oversaw the preparation of it like I do in such matters, of course I don't write agreements myself but I direct the preparation of them.

Q. You couldn't testify that he prepared agreements without having some agreement in your mind; now, tell us one?

A. Well, the agreement of 1882.

Q. But you have not any personal knowledge of that?

A. No.

Q. So that you could not have based your testimony on that; now, then, tell us some that you have some knowledge of yourself, some agreement that Mr. Hubbell prepared?

A. I assumed he was the father of all the agreements.

Q. I don't want your assumptions, I want what you know, tell us some one that he prepared, if you can?

A. I cannot vouch for his having prepared in the way you mean, if you mean the drawing of them, any of them.

Q. Well, that is what I thought; going back a little, when was the Des Moines Union Railway Company organized?

A. 1887, wasn't it? Somewhere along there.

Q. I don't want to mislead you on a date, the articles were adopted in December, 1884, I think; at the time of the organization of the Des Moines Union Railway you were not charged with responsibility as to any of these matters?

A. No.

Q. What, if anything, did you have to do with the organization of the Des Moines Union Railway, you personally?

A. Nothing.

Q. And there was some one who represented the Wabash Company, or the Purchasing Committee, or whoever it was in the series of people there, to whom this property passed, that did represent the Wabash at that time, there was somebody? A. I assume so.

Q. You take that for granted? A. Yes sir.

Q. And that man would probably, if he could remember distinctly what occurred twenty-five years ago, know what his purpose was at that time, you don't know what the man's purpose was, do you? A. No sir.

Q. This receivership lasted from the time you became connected with the Wabash until, as to this property west of the river, the 1st of April, 1887?

A. Yes sir.

Q. How long did the receivership east of the river last?

A. Until August 1st, 1889. I think.

Q. Were you connected with the properties east of the river prior to the termination of that receivership?

A. No sir, not with what were known as the properties, we were operating the Chicago and Detroit line, but that was operated for the Purchasing Committee.

Q. During this receivership there was a vast amount of complication and complicated litigation that took your attention in addition to the ordinary business of operating the railroad?

A. Not so far as the eastern lines were concerned, because I had nothing to do with them.

Q. But the western lines? A. Yes sir.

Q. Everything was mixed up there? A. Yes sir.

Q. And didn't the lawyers require first consideration and claim the right of way until that was wound up?

A. Yes sir.

Q. And they required a great deal of time, of course?

A. Yes sir.

Q. When you became connected with the Des Moines Union Railway Company who were the directors of that company?

A. My recollection is that Mr. F. M. Hubbell, I think Gen. Dodge, Mr. How, I am not sure whether Mr. F. C. was another one or not, I don't think he was, and there was another, Mr. Thompson, I think he was there, that is all I recall now.

Q. I will go back to that later. Now, you stated on your direct-examination that the purchase of terminals there was in charge of Mr. F. M. Hubbell; you mean, I suppose, after you became connected with this property, you didn't mean to testify as to what transpired before you had any personal knowledge of the matter, did you?

A. Well, that was my understanding that he had when I say prior, prior to that time it was my understanding he was.

Q. Aside from what you had been told by somebody, or your understanding, after you came to have some personal knowledge of this matter, what, if anything, did Mr. Hubbell have to do with purchasing these terminals?

A. I think he had everything to do with them.

Q. The purchase after you went in there?

A. Yes sir.

Q. Can you tell us any purchase that was made after you went in there by Mr. Hubbell or by anybody else while you were there without conference with you and without your acquiescence?

A. I cannot describe properties that were bought but I recall conversations about the properties, about the desirability of buying properties.

Q. In other words, he would talk to you and suggest that it was desirable to do something?

A. Yes sir.

Q. And you would discuss it and if it was concluded it was desirable then he would consummate it?

A. Yes sir.

Q. That is what you mean by saying he had charge of it?

A. Yes sir.

Q. And there was always one other factor at that time, wasn't there, and that is where you could borrow the money?

A. The question of funds, yes sir.

Q. I imagine that was a live one?

A. That was always a live question.

Q. Who prepared the original articles of incorporation of the Des Moines Union Railway Company?

A. I don't know.

Q. You were not present at the meeting at which they were adopted? A. No sir.

Q. You don't know whether they were submitted to counsel for the Wabash Company, or whatever the name was, and approved or not? A. No sir.

Q. You don't know whether they were prepared by such counsel or not? A. No sir.

Q. You have no personal knowledge as to the action of the Wabash Company in adopting those original articles?

A. No sir.

Q. So that you don't know of your personal knowledge whether it was the purpose of whoever represented the Wabash interests then to in any way affect the contract of 1882, or not? A. No sir.

Q. The only inference that you could make about that would be by looking at the articles and seeing what they said? A. Yes sir.

Q. How long is it since you read this contract of January 2d, 1882?

A. I read it this morning.

Q. Now, you state that while you were connected with the company you were not authorized to make any changes in this contract, as I understood you on your direct-examination: who did represent the Wabash in Des Moines Union matters while you were its general manager?

A. I was a director on the Board, I think we had two or three directors, two I think, Col. How and myself.

Q. And who was Col. How?

A. He was at that time vice-president of the company.

Q. You and Mr. How represented the Wabash interests in connection with the Des Moines Union during the time that you were general manager of the Wabash? A. Yes sir.

Q. And you voted the Des Moines Union stock that was held by the Wabash or the Purchasing Committee?

A. Yes sir.

Q. And by voting that stock you elected yourselves and others directors of the company, the Des Moines Union Company?

Counsel for complainants object to the question for the reason that the articles of the Des Moines Union Company provide that the railway companies which organized the Des Moines Union Railway Company should nominate the directors, and, for the further reason, that there was no stock issued or outstanding of the Des Moines Union Railway Company at any time during Mr. Hays' connection with the Wabash properties.

A. I was going to raise the same point that Mr. Minnis has. My recollection is our holding gave each of the proprietary companies the right to nominate their directors in the company, and the Colonel and myself were nominated as directors for the Wabash in that company; I don't think we were elected by the usual method.

Q. You know that the records of the Des Moines Union showed each year that you had a stockholders' meeting?

A. Of course I don't go back on the records, I assume, Mr. Guernsey, that if the record did show it it was a matter of confirmation of the nomination of the Wabash road, I think.

Q. I find this in the record of a meeting of the board of directors of the Des Moines Union Railway held November 8th, 1887: "The meeting being called to order by the vice-president, and the death of A. A. Talmage being suggested, Charles M. Hays was unanimously elected to fill the vacancy caused by his death, and said Hays being present took his seat on the board;" your recollection is that that is the record of your first election as a director of the Des Moines Union Railway Company, is it not? A. Yes sir.

Q. Now, I notice the first thing that was done here was this: "On motion of Mr. Charles M. Hays it was unanimously resolved that this company be authorized to purchase from Messrs. Polk & Hubbell two lots described as follows, to-wit: Lots No. 2 and 3 in Block 33 of Keene & Poindexter's Addition to the City of Des Moines, at such price as may be agreed upon between Messrs. Polk & Hubbell and O. D. Ashley, secretary of the Purchasing Committee, and the Wabash, St. Louis & Pacific Railway Company, said lots to be paid for in the bonds of this company at par"; now, is that one of the purchases that you referred to of which Mr. Hubbell had charge? A. Yes sir.

Q. Now, it appears that you offered the resolution and that the purchase was from Mr. Hubbell and one of the grantors?

A. I think he probably handed me the resolution to offer.

Q. And that the price was to be agreed upon by Mr. Ashley and the Wabash on the one side and Polk & Hubbell on the

other; now, would you say that Mr. Hubbell had more to do with that than the Wabash or Mr. Ashley? A. No.

Q. Now, Mr. Hays, I want to read to you a part of the stockholders' meeting held on March 31st, 1888: "The stockholders' met this day pursuant to adjournment at the office of the company in Des Moines, Iowa. There were present and represented at the meeting the following named stockholders of said company, to-wit: G. M. Dodge, Jefferson S. Polk, Charles M. Hayes, F. M. Hubbell, James F. How, W. H. Blodgett, and L. M. Martin. On motion G. M. Dodge was elected chairman and F. M. Hubbell secretary of the meeting. The Chairman then requested the reading of the minutes of the meetings of the board of directors for the past year, which was done, and after consideration of the same, the action of the board as therein indicated was approved. On motion the meeting proceeded to the election of a board of directors for the ensuing year. James F. How, on behalf of the Wabash, St. Louis & Pacific Railway Company, and of the Des Moines & St. Louis Railroad Company, and of the Wabash Western Railway Company, nominated Charles M. Hays, W. H. Blodgett, John S. Polk, and James F. How to be voted for as directors to represent said interests. F. M. Hubbell, on behalf of the Des Moines & Northwestern Railway Company, nominated Jefferson S. Polk and F. M. Hubbell to be voted for as directors to represent said company. G. M. Dodge, on behalf of the St. Louis, Des Moines & Northern Railway Company, nominated L. M. Martin and G. M. Dodge to be voted for as directors to represent the interests of said company. A ballot was then taken for the election of said board of directors and it appearing that each of the above persons so nominated received the unanimous vote of the stock present and represented for said office were each declared directors of this company for the ensuing year"; now, that is the record of the first stockholders' meeting at which you were elected a director?

A. Yes sir.

Mr. Minnis: You were reading the minutes kept by Mr. F. M. Hubbell when, I understand, it is agreed on all hands that the stock of the Des Moines Union Railway Company was not issued to anybody until 1890. You are interrogating the witness about minutes that purport to be stockholders' meetings, when, as I understand, everybody agrees there was no stock issued them at all.

Mr. Guernsey: I am not agreeing to anything now, I am just asking questions.

Mr. Minnis: I object to that unless the witness first is interrogated as to whether there were any stockholders' meetings.

Mr. Guernsey: I suppose that would be asking for a conclusion of law and I have great confidence in the witness' experience, judgment and ability. I don't know that he has ever qualified as a member of the bar.

Mr. Minnis: The point is you are reading to Mr. Hays what purports to be minutes of stockholders' meetings. There was no stock issued at that time.

Mr. Guernsey: What the fact is about that will appear, and I believe—

Mr. Minnis: If Mr. Hays merely means by saying "Yes" to your question that that is recited there, that is one thing.

The Witness: Of course, that is what I mean; he is reading the record of a meeting and I say "Yes, that is the record".

Mr. Guernsey: I do not hope by indirection to get anything out of Mr. Hays, and, in the next place, I don't suppose he could determine the legal effect of these things, and we cannot ask him to do it anyhow.

The Witness: I think it is fair for me to qualify that and say yes, it is, if you read it out of the record. I take it for granted that you are reading a correct copy of a correct record, of course, and that is all.

Mr. Guernsey: I believe I am, and I believe I am reading it correctly.

The Witness: It is fair to assume that you are.

Q. Now, then, at this meeting it appears, if this record is correct, that Mr. How nominated one half of the directors of the Des Moines Union for the ensuing year; Mr. How was at that time the vice-president, and what other office, if any, did he hold in the Wabash? A. I think that is all, vice-president.

Q. And that Mr. Dodge nominated two more directors representing the road, and that Mr. Hubbell nominated only two directors out of the eight, so that at that time the Hubbell interests had simply one-fourth of the directors of this property, that is correct, isn't it? A. Yes sir, according to the record.

Mr. Minnis: That is correct if the record is, Mr. Hays don't know.

Mr. Guernsey: I do not say Mr. Hays will say that he can remember that on a certain day certain action was taken, I would like to have Mr. Hays say this, that all he knows as to what transpired at these meetings is what the record of the meetings show, if it is true.

The Witness: If the records are correct.

Q. Can you, without the records tell us what transpired at any meeting? A. No.

Q. The only evidence that you would have, if you wished yourself to ascertain what transpired at any one of these meetings, would be the records of those meetings, that is right, isn't it, you can't remember?

A. I can't remember, no, I must depend on the accuracy of the record.

Q. You were a director in 1888 in how many corporations?

A. A large number, I couldn't tell you the number of them.

Q. You couldn't remember what they were, could you?

A. No sir, I could remember a number of them, but whether I got them all in or not, I couldn't say.

Q. You couldn't pretend to remember what transpired at the various meetings of the board of directors or the stockholders of those various corporations? A. Not in detail.

Q. Could you give us a general outline at this time?

A. I have a general recollection of our meeting for certain purposes and to do certain things and that would be such acts as were customary for directors to take at such meetings.

Counsel for defendants states that he would like to have the record show that this cross-examination as to this matter of Mr. Hubbell representing the Wabash interests in the Des Moines Union is subject to his objection to this testimony given on the direct examination; that he does not want to have it through inadvertence appear that he waives it.

Q. Now, what interests had the Wabash in Des Moines that Mr. Hubbell represented?

A. Its interests in this terminal property.

Q. During all of the time that it was interested in this terminal property, it had its own members of its board of directors, didn't it? A. Yes, but they lived in St. Louis.

Q. But they came to Des Moines to attend the directors meeting, didn't they?

A. Yes sir, but the general supervision and oversight of the property was left to Mr. Hubbell.

Q. And they frequently conferred with the people in Des Moines, didn't they, the Wabash directors?

A. I assume so.

Q. And the president of the company was Gen. Dodge; when did he cease to be president with reference to the severance of your connection with it?

A. My recollection is, that the General was president only for a short time after my connection, I don't think more than a short time after my connection with it.

Q. We can get it probably in a moment; our memorandum shows that F. C. Hubbell was elected president on the 7th of January, 1892, and he succeeded Gen. Dodge?

A. I have no recollection of the General presiding at a meeting more than once or twice.

Q. I can't tell you without looking at these meetings, but if the memorandum—

A. I have an impression that the General did not come out much, I very rarely saw him.

Q. Well, the record will show, it seems he was chairman here in 1888, I will turn over to the next year, we will get that hereafter. When Gen. Dodge ceased to be president he was succeeded by Mr. F. C. Hubbell, wasn't he? A. Yes sir.

Q. Mr. F. C. Hubbell then had the active supervision of the operation of the Des Moines Union property, hadn't he?

A. Yes sir.

Q. Now, Mr. F. M. Hubbell was interested in the Des Moines & Northwestern Railway,—I won't attempt to name that with absolute accuracy, because the name changed so many times?

A. The St. Louis, Des Moines and Northers, and Des Moines & Northwestern are the two small lines.

Q. The St. Louis, Des Moines & Northern was Gen. Dodge's line? A. I thought he was interested in both.

Q. He was interested in both but he had a preponderating interest in the St. Louis, Des Moines & Northern, or the Boone line and Mr. Hubbell had the controlling interest in the Des Moines & Northwestern?

A. I didn't know anything about their respective interests, I knew they were both in both properties.

Q. Do you know of anything that Mr. Hubbell ever did in connection with the Des Moines Union property outside of purely formal operating matters without conference with the Wabash directors?

A. No, my recollection of the situation is this, we went up there to Des Moines, Mr. Hubbell and his son were living in Des Moines, they knew more about the property than anybody else, we valued their advice and judgment and we did about what they thought we ought to do.

Q. That was in the acquisition of additional property?

A. Yes sir, or anything about the property, for that matter.

Q. Well, what other questions were there of that kind, aside from the acquisition of additional property that occurs to you?

A. The question of the creating of a fund for operating expenses.

Q. During the early period—

A. Questions of policy in connection with the property, in other words, their relations were such as happens with lines of every railroad where they have some associate or someone

connected with the property whom they look to to attend to everything connected with their interests. I will illustrate what I mean, because this happens on all roads, that it was like a Mr. J. F. Joy did at Detroit, who was left to do everything for the road at Detroit, and Mr. Hubbell was such a man for us at Des Moines.

Q. When did Mr. Hubbell acquire the Des Moines & Northwestern? A. I don't know, sir.

Q. After Mr. Hubbell acquired the Des Moines & Northwestern, did you expect him to represent the Wabash where the interests of the two companies were adverse?

A. I did not see any reason why they would be adverse.

Q. Did you expect Mr. Hubbell, where the interests of the two were adverse, after the acquisition of the Des Moines & Northwestern to represent the Wabash?

A. I always considered they were the same, they were identical.

Q. Then as far as you know Mr. Hubbell never did represent the Wabash in any matter where the interests of the Wabash were adverse to the Des Moines & Northern and Des Moines & Northwestern? A. No sir.

Q. What he did was this, wasn't it, there was this terminal company there in Des Moines, Mr. Hubbell was on the ground, the Wabash was interested in it; now, as questions arose affecting the terminal company, you naturally asked his advice and were naturally inclined to rely on the information that he had as to that local situation there, do I get it correctly?

A. Practically so; we would meet there and Mr. Hubbell would say, "I should think we ought to do this, that and the other thing," and we naturally acquiesced in what Mr. Hubbell said.

Q. You state that you did not subscribe for any Des Moines Union stock, did you ever hold any?

A. Not to my knowledge.

Q. As a matter of fact, isn't this correct, that one share of the Wabash stock was put in your name to qualify you as one of the Wabash directors?

A. I presume so, but I didn't hold it, it was left in the record book, it was just there to qualify me.

Q. You were not the beneficial owner of it?

A. No sir.

Q. But you were there in a representative capacity, representing the Wabash interests, and the stock necessary to qualify you had been put in your name?

A. That is subject to what was stated before, Mr. Minnis said there was no stock issued.

Q. I am not asking what Mr. Minnis said, but what you remember about it?

A. I don't remember anything about the stock standing in my name, the certificate would be made up and stand in the book and never taken out, just stand in the certificate book.

Q. And it might be taken out? A. Yes sir.

Q. You have no recollection about that?

A. I mean it would not be taken out and handed to me, no stock was ever taken out and handed to me as a director.

Q. That is, you have no recollection of that? A. No.

Q. And still if we should produce the stock book and show your receipt for it, you would think that you had receipted for it?

A. That would be pretty good evidence.

Q. Now, who was Jefferson S. Polk?

A. Well, he was known by me as an associate of Mr. Hubbell's.

Q. Was he a lawyer? A. I think so.

Q. Was he a member of the firm of Polk & Hubbell?

A. That is my understanding.

Q. Will you say that Mr. Polk did not have charge of the preparation of these papers and things of that kind?

A. No.

Q. You don't know, do you? A. I don't know.

Q. Who was the attorney for the Wabash in Des Moines during this period? A. I think Mr. A. B. Cummins.

Q. Not the first part, Mr. Runnells?

A. Mr. Runnells, yes.

Q. Mr. John S. Runnells, and he was one of the Wabash directors for the Des Moines Union for sometime, was he not?

A. I don't recollect about that.

Q. And after Mr. Runnells went to Chicago, Mr. A. B. Cummins became the attorney for the Wabash in Des Moines?

A. Yes sir.

Q. And was nominated as one of the Wabash directors?

A. I can't say positively as to that.

Q. Now, passing that for the present, you said, I believe, that you never intended to in any way modify or affect the contract of January 2nd, 1882? A. Yes sir.

Q. Now, when you adopted the amended articles of incorporation you intended to adopt them, didn't you?

A. Yes sir.

Q. And you intended then to have the effect that the law would give to them, didn't you? A. Yes sir.

Q. And you were not the counsel for the Wabash Company at that time, were you? A. No sir.

Q. And you relied so far as questions as to the effect of those things, upon the counsel for the company, didn't you?

A. Yes sir.

Q. You did not attempt to decide those things?

A. No sir.

Q. Now, do you remember whether you were present at a meeting of the stockholders of the Des Moines Union Railway Co., held on January 3rd, 1890?

A. No sir, I don't remember the date.

Q. Do you remember that was the year in which these Articles of incorporation were amended?

A. I only know it by you gentlemen having mentioned it.

Q. Now, assuming that the record of the meeting of the stockholders of the Des Moines Union Railway Co., purporting to have been held on the 3rd of January, 1890, contains this; "James F. How moved that the question of amending the articles of incorporation of this company as well as the question concerning the issuing of stock for the purchase price of the terminal property be referred to attorneys W. H. Blodgett and A. B. Cummins for their investigation and recommendation," that that motion was seconded and carried, would you say that the amendment to the articles made in 1890 was suggested by Mr. How or not?

Counsel for complainants objects to the question for the reason that the question does not call for knowledge or information that the witness has, but asks an opinion merely.

Q. I will change the form of the question, I suppose that could be construed that way, but assuming that the record of this meeting contains the statement that I have just read to you, would you say that the change in those articles was suggested by Mr. Hubbell, or not?

Counsel for complainants objects to the question, because it does not call for the recollection of the witness or his knowledge of the facts.

A. I don't recall anything about it.

Q. Then you would have to say that you don't recollect who in the first instance suggested that matter, that is the change of the articles? A. Yes sir.

Q. Now the W. H. Blodgett referred to here is C'd. Blodgett, who was at that time the general counsel or general solicitor for the Wabash Company, that is right, isn't it?

A. Yes sir.

Q. And Mr. A. B. Cummins at that time was the local attorney in Des Moines for the Wabash Company?

A. Yes sir.

Q. These two gentlemen were both Wabash directors of the Des Moines Union at that time? A. Yes sir.

Q. And Mr. How at that time was the vice-president of the Wabash Company and also a Wabash director of the Des Moines Union? A. Yes sir.

Q. Now, it appears in a record of what purports to be a meeting of the stockholders of the Des Moines Union Railway, held on February 18th, 1890, that the following proceedings were had: "Thereupon A. B. Cummins presented certain amendments to the articles of incorporation; thereupon F. M. Hubbell moved that the meeting of the stockholders do now adjourn for the purpose of having further opportunity to examine said amendments to meet on Tuesday, the 8th day of April, 1890 at 10 o'clock A. M., which motion being seconded was unanimously carried, and thereupon the meeting of stockholders adjourned to meet as aforesaid;" have you any recollection of the matters that are referred to in the extract that I have just made from that record? A. No sir.

Q. Now, turning to the meeting of April 8th, 1890, we find this, "Thereupon F. M. Hubbell moved that Article 1 of the Articles of Incorporation be stricken out and the following substituted in lieu thereof 'Article 1, the name of the corporation shall be the Des Moines Union Railway Company, and its principal place of transacting business shall be at Des Moines in the County of Polk, in the State of Iowa.' This motion was seconded by C. M. Hays and was adopted by the vote of all the stockholders of the corporation;" have you any recollection with reference to that matter? A. No sir.

Q. It then appears that "C. M. Hays moved that Article 2 be stricken out and the following substituted in lieu thereof," a long Article 2 following, have you any recollection of that?

A. No sir.

Q. Then Mr. Martin made a motion as to Article 3, I presume you have no recollection as to that? A. No sir.

Q. And Mr. Martin, by the way, was an officer of Gen. Dodge's railroad at that time, wasn't he?

A. General freight agent, I think.

Q. And did not Mr. Martin also sustain some relation to the Wabash?

A. Later on he did, I am not sure whether it was at that period or not.

Q. He represented the Wabash in Des Moines in some capacity later on while you were connected with the Wabash?

A. Yes sir.

Q. And in what capacity did he later on represent it?

A. General agent, I think.

Q. Having charge of what business there?

A. Our freight and passenger business.

Q. Then Mr. Cummins moved that Article 4 be stricken out and something substituted for it; Mr. Cummins was at that time your local attorney in Des Moines, wasn't he?

A. Yes sir.

Q. You have no recollection of that, I suppose?

A. No sir.

Q. Have you, aside from the records, any recollection of the fact that these articles were amended?

A. No sir, I have not.

Q. Have you read these records recently? A. No sir.

Q. So that you had, when you testified on your direct examination, no personal recollection of these transactions relating to the amendment to the articles? A. No sir.

Q. That is, you mean you had no such recollection?

A. I had no recollection of the amending of the articles.

Q. Have you any reason to suppose that you didn't do at that meeting what the records of that meeting show you did do?

A. No sir, always qualifying, if the records are correct.

Q. Now, the record shows this, referring to that meeting: "C. M. Hays moved to add to the articles of incorporation Article 15, as follows: The proceedings of a meeting held December 10th, 1884, with certain preambles including a contract executed on the 2d day of January, 1882, between the Des Moines & St. Louis Railroad Company, the Des Moines Northwestern Railway Company, and the St. Louis, Des Moines & Northern Railway Company, consented to by the Wabash, St. Louis & Pacific Railway Company, which now appears as part of the articles of the incorporation of this company, are hereby repealed, stricken out and expunged, which motion was adopted", and so on; in the first place, do you know now what meeting of December 10th, 1884, is referred to there?

A. No sir.

Q. And when you testified on your direct examination did you know that the records show that you moved that the article I have just read be adopted?

A. No sir; wasn't this December, 1884?

Q. This was the meeting of April 8th, 1890, did you at that time recollect that such an article had been adopted at the meeting of April 8th, 1890?

A. This article that you have just read?

Q. The one I have just read? A. No sir.

Q. And did you at that time recollect that you had signed and acknowledged the amended articles of incorporation containing this article that I have just read? A. No sir.

Q. Now, if, as a matter of fact, the record of this meeting, April 8th, 1890, shows that the article I have just read was adopted, and if, as a matter of fact, it appears that you

signed those amended articles containing this article so adopted, then you wouldn't say that that transaction did not occur, would you? A. If the record was correct.

Q. Well, suppose we assume that the record was incorrect, but we assume that the amended articles have your name signed to them and that you acknowledged them before a Notary Public, in the face of that would you say that they were not adopted? A. No sir.

Q. And in the face of that you would not say that you did not sign them, would you? A. No sir.

Q. Now, then, if this record appeared to show that the matter of these amended articles was referred to Col. Blodgett, the General Solicitor or General Counsel at that time of the Wabash Company, and to Mr. Cummins, its local attorney, would you say that those amended articles were not prepared by them?

Counsel for complainants objects to the question because the question does not call for any recollection or information of the witness.

Q. What I want to know is this, if the record shows those things, have you an independent recollection which you would be willing to rely on yourself which would enable you to say that Col. Blodgett and Mr. Cummins did not prepare these amendments?

A. I would not be able to say whether they did or did not.

Q. You would say this, would you not, that it would be a very unusual thing for you to act on such a matter as this without submitting it to the Legal Department of your company? A. Yes sir.

Q. And you would be able to say, would you not that you were entirely confident that it had been submitted to the Legal Department of your company and approved by it before you acted on it? A. Yes sir.

Q. Do you remember whether you discussed these amended articles with Mr. Hubbell or not? A. No sir.

Q. You may have and may not? A. Yes sir.

Q. Now, you were asked whether Mr. Hubbell at any time claimed to be acting for himself in those matters, I think the exact question was, "Did he at any time claim to be acting for himself in those matters"; now, during all the time that Mr. Hubbell was a Des Moines Northwestern Railroad Company director in the Des Moines Union, he claimed to be such director, didn't he? A. Yes sir.

Q. And he claimed to be representing that company on the Des Moines Union board, didn't he? A. Yes sir.

Q. Just as you other gentlemen claimed to be representing the other companies? A. Yes sir.

Q. And that was clearly and distinctly understood, wasn't it? A. Yes sir.

Q. Mr. Hays, if you yourself were trying to get at the true inwardness of these old transactions involving this Des Moines Union Railway Company property, would you go to the records or would you rely on your recollection?

A. I would go to the records.

Q. Now, you were asked about the resolution adopted in May, 1888, by the board of directors of the Des Moines Union Railway Company which provided the basis for the distribution of the expenses incident to the operation of the property there, including the taxes, and so on; have you any recollection of that matter, or do you simply rely on the record there?

A. I have a general recollection of that matter.

Q. Do you remember when the Des Moines Union actually took over the operation of the property?

A. My recollection is it was sometime in 1887.

Q. Do you remember how long it was before there was a written contract signed with reference to the matters that were referred to in this resolution?

A. No sir, I don't recall the time that intervened.

Q. You do, however, recall the fact that at first there was simply a resolution passed? A. Yes sir.

Q. And that later there was a formal written contract entered into that was intended to carefully define the rights of all the parties there? A. Yes sir.

Q. And if you were endeavoring for your own benefit without reference to this lawsuit to ascertain just what the rights of the parties were at that time, you would go to that contract, wouldn't you? A. Yes sir.

Q. And you would rely on that as against your recollection, wouldn't you? A. Yes sir.

Q. Now, your attention was called to a resolution of February 11th, 1891, with reference to what we call the surplus earnings; have you any definite recollection with reference to that resolution aside from what was read to you from the record? A. Only a general recollection of the meeting.

Q. As a matter of fact were there any surplus earnings prior to February 11th, 1891? A. Surplus in what respect?

Q. In the sense that we have used it through all this controversy?

A. You mean when you say surplus earnings we were taking the current earnings, do you mean current earnings or surplus earnings? The current earnings of course—when you say surplus you mean over and above the amount of fixed charges on the property, I assume you mean current earnings.

Q. No, I mean surplus earnings, perhaps in an improper sense, but in the sense in which the term has been used for twenty years in reference to these earnings here of the Des Moines Union, it is the personal use of the term made by the parties to that arrangement, but I will abandon that; taking the earnings referred to in the resolution of February 11th, 1891, from rents of real estate and switching for other roads, were there any earnings of that kind of any consequence prior to the date of that resolution, as far as you know?

A. There were current receipts, what the amount of them was I don't know.

Q. You think there were some?

A. I think there were some, yes.

Q. After January 7th, 1892, and while you were with the Wabash Company, were these earnings from switching, and revenue derived from real estate, ever divided among the tenant companies?

A. My recollection is in the way that was spoken of in the direct examination, by crediting on the bills of the companies.

Q. Your recollection is that they were so divided?

A. Yes sir, credited on the expenses of the companies according to their wheelage.

Q. I think that is an error, Mr. Hays?

A. How long they continued to be credited, I do not know.

Q. You do know, don't you, that thereafter various amounts of those earnings were used for capital expenditures of the Des Moines Union with your concurrence?

A. No, I do not, my understanding of it was that we created a temporary fund, supposed to be temporary, for the purpose of meeting the current expenses, and that ran along without any distribution.

Q. You have no recollection of any use being made of that fund except for current expenses?

A. That is all, as far as I remember.

Q. I want to call your attention to this from a record of a meeting of what purports to be the minutes of the monthly meeting of the directors of the Des Moines Union Railway Company held at the office of the company at ten o'clock a. m. July 10th, 1894— A. Was I present?

Q. I was just looking to see; no, but you are referred to. Now, in the record of that meeting this appears: "On motion F. M. Hubbell, the treasurer, was directed to pay the Abbie-Bechtel mortgage of \$2000 with accrued interest thereon upon the south 44 feet of Lot 10 in Block 35, Fort Des Moines, Iowa, upon which is situated in part the freight house of this company, and upon payment of same to have the mortgage cancelled of record, provided, however, that the written con-

sent of Charles M. Hays could be procured"; now, do you remember thereafter writing and consenting to the payment of this money? A. No sir.

Q. Mr. Hays, I call your attention to a letter marked Defendant's Exhibit No. 1, A. E. M., and ask you whether that is a letter which you wrote to Mr. Hubbell at about its date with reference to the matter referred to in this resolution?

A. Yes sir, that is my signature.

Q. This letter reads as follows, doesn't it: "The Wabash Railroad Company. Office of Charles M. Hays, Vice-President and General Manager. St. Louis, Mo., August 9th, 1894. Mr. F. M. Hubbell, Secretary and Treasurer. Dear sir: I have yours of the 7th showing surplus earnings of Des Moines Union Railway on hand July 1st of \$15,312.89, and after paying note of L. P. Hill of \$4000 and interest, \$180, \$11,132.89 on hand. I approve of your application of \$2000 of this amount to the payment of the Abbie-Bechtel mortgage. Yours truly, Charles M. Hays, Vice-president and General Manager"?

A. Yes sir.

Q. This mortgage was a part of the purchase price of some property acquired for the Terminal Company there?

A. Evidently.

Q. And the Hill mortgage also referred to here, L. P. Hill, was also a like payment? A. Yes sir.

Q. I call your attention to another letter that has been marked Defendants' Exhibit No. 2, A. E. M., and ask you whether that is also a letter which you wrote to Mr. F. M. Hubbell? A. Yes sir.

Q. That letter also refers to this Hill mortgage?

A. Yes sir, refers to the L. P. Hill note of \$4000.

Q. I will ask you if I am reading this into the record correctly, it reads as follows, doesn't it: "The Wabash Railroad Company, Office of Charles M. Hays, Vice-president and General Manager. St. Louis, Mo., June 19th, 1894. Mr. F. M. Hubbell, President, Des Moines, Iowa. Dear Sir: Referring to the M. L. P. Hill note of \$4000 which you reported at a meeting of directors of the Des Moines Union Railway Company, held June 7th, as having been paid by you which you suggested should be taken out of the surplus earnings of the Des Moines Union Railway, and upon which I withheld my vote until I could consult with President Ashley of the Purchasing Committee, after discussion of the matter with Mr. Ashley and General Solicitor Blodgett, they concur in the opinion that a proper disposition of the payment will be to charge it to the surplus earnings as proposed, and you may therefore be governed accordingly. Please ascertain from treasurer and advise me what balance this still leaves in the hands of treasurer

to the credit of 'surplus earnings.' Yours truly, Charles M. Hays, Vice-President and General Manager"?

A. Yes sir, that is a correct reading.

Q. For the purpose of seeing whether it refreshes your recollection, Mr. Hays, I want to call your attention to the record of June 7th, 1894, a directors' meeting where it appears from this record that you were present and from which I read the following: "The records of the meeting of May 26th, 1894, were read, and the proceedings therein set forth were on motion unanimously approved and agreed to with the exception of the resolution to pay the mortgage on Lot 7 in Block 15 of the original town of Fort Des Moines amounting to \$4000 out of the funds on hand realized from the rents of real estate and switching cars. On motion to approve this part of the record Mr. Hays wanted further time"; now, does that refresh your recollection so that you remember that meeting? A. No.

Q. Have you any recollection as to whether, after the meeting was held, you took the matter up with Mr. Ashley and Col. Blodgett? A. No sir.

Q. You would simply have to rely on the record and your letter? A. Yes sir.

Q. And have you any recollection now as to what in fact was done with the surplus earnings after January 7th, 1892?

A. No sir.

Redirect Examination

By Mr. Minnis:

Q. Mr. Hays, early in your cross-examination Mr. Guernsey read from the records of the Des Moines Union Railway Company recitals which purport to be minutes of stockholders' and directors' meetings of that company; did you, in your answers to questions Mr. Guernsey propounded to you in connection with those recitals, intend to give the impression that the matters recited in such minutes were true, or that you remembered the occurrences referred to in such recitals, or the transactions referred to in such recitals? A. No sir.

Q. Do you know whether the minutes are correct accounts of the proceedings of the meetings of the directors or stockholders of the Des Moines Union Railway Company?

A. No sir.

Q. Do you recall any stockholders' meetings of the Des Moines Union Railway Company?

A. No sir, no specific meetings.

Q. You were asked by Mr. Guernsey whether Mr. Hubbell represented the Wabash interests in any transactions wherein the Northwestern had an adverse interest; do you recall any instance where the Northwestern had interests adverse to the Wabash in connection with the Des Moines terminals?

A. No sir, I so replied to him that I could not conceive of any adverse interests.

Q. Did you at any time hear Mr. Hubbell or anybody else claim that he or the Des Moines Union Railway Company held interests in the Des Moines terminals adverse to the Wabash interests? A. No sir.

Q. You were asked by Mr. Guernsey whether Mr. Hubbell did not represent the Northwestern and what we call the Northern Company on the board just as representatives of the Wabash represented the Wabash on the board of the Des Moines Union Terminal? A. Yes sir.

Q. Then Mr. Hubbell did assume in acting on the board to represent the Northwestern and the Northern Companies?

A. Yes sir.

Q. Did he at any time claim any adverse interests in the Des Moines terminals to them, or that the Des Moines Union Railway had adverse interests? A. Not to my recollection.

Q. Assuming for the purpose of the question that the defendants Hubbell now claim by reason of the adoption of the amended articles the Wabash Company surrendered to the Des Moines Union Railway Company the right to perpetually use the Des Moines terminals, I will ask you to state whether you would have known of a purpose on the part of the Wabash Company to surrender to the Des Moines Union Railway Company its perpetual right to use the terminals at Des Moines?

Counsel for defendants objects to the question as incompetent and calling for an opinion of the witness.

A. I certainly did not know of any such intention.

Q. Was it at any time the purpose of the Wabash Company to surrender to the Des Moines Union Railway Company its rights in the Des Moines terminals?

Counsel for defendants makes the same objection.

A. Not to my knowledge.

Q. You say that, notwithstanding your attention has been called to the purported minutes at which the alleged amended articles were adopted and also to the fact that you signed and acknowledged the amended articles? A. Yes sir.

Q. You have said that Mr. Hubbell represented the Northwestern and the Northern on the board of the Des Moines Union Railway Company; I will ask you whether he also did not represent the Wabash interests in that property?

A. Not as a director but as general advisor and representative of the joint interests.

Re-cross Examination

By Mr. Guernsey

Q. Did you ever know that Mr. Hubbell was a stockholder in the Des Moines Union? A. No sir.

Q. Did you ever hear that the Wabash had sold him any stock in the Des Moines Union or that the Purchasing Committee had?

A. I have heard it just since the reading of this record of this suit.

Q. You mean since this suit was commenced? A. Yes sir.

Q. Prior to that time you had never heard that the Wabash had sold Mr. Hubbell any stock in the Des Moines Union?

A. No sir, not to my recollection.

Q. And you didn't know either he or F. M. Hubbell & Son owned any stock?

A. Except as representatives of the two companies, the Des Moines and Northwestern, and the St. Louis, Des Moines & Northern.

Q. Did you know anything about the two contracts which the Purchasing Committee made with Mr. Hubbell for the sale to him of stock in the Des Moines Union Railway Company in 1890? A. No sir.

Q. That is, you have no personal recollection of them?

A. No sir.

Q. Do you remember a contract that was made in 1897 between the Des Moines Union and the Wabash—

A. I had left the road, you know.

Q. That was after you had left? A. Yes sir.

Q. Now, the record of the meeting of the board of directors of the Des Moines Union Railway Company held April 8th, 1890, shows this: "C. M. Hays offered the following resolution: Resolved that the shares of the capital stock of this corporation of the par value of \$50,000 sold by the Purchasing Committee of the Wabash, St. Louis & Pacific Railway Company to F. M. Hubbell, which sale has been ratified by the Des Moines & St. Louis Railroad Company, be approved and the transfer thereof to said Hubbell on the books of the company be and the same is hereby ordered. C. M. Hays moved the adoption of the said resolution, and it was thereupon adopted by the vote of all the directors"; now, assuming that the record of the Des Moines Union Railway Company shows this, would you say that you did not offer that resolution? A. No sir, assuming that the record is correct.

Q. Now, I will call your attention to two papers marked Defendants' Exhibit No. 3 and Defendants' Exhibit No. 4, A. E. M., and ask you whether you recognize the signature to those papers, and, if so, whose it is?

A. Yes sir, I recognize the signature of O. D. Ashley, Secretary of the Purchasing Committee.

Q. I want to read Exhibit 4 to you, and see if that refreshes your recollection about this matter, it reads as follows: "Know all men by these presents, That the Purchasing Committee of the Wabash, St. Louis & Pacific Railway Company for and in consideration of the sum of \$67,000,000., and interest thereon at the rate of five per cent per annum from November 1st, 1889, the receipt of which is hereby acknowledged, has sold, assigned, and set over, and by these presents does sell, assign and set over unto F. M. Hubbell, Des Moines, Iowa, 67 bonds of the Des Moines Union Railway Company for \$1000 each, and also one-eighth of the capital stock of said Des Moines Union Railway Company,

"And said Committee hereby authorizes and impowers said Des Moines Union Railway Company, or the proper officers thereof, to issue to said Hubbell or his assigns one-eighth of all the capital stock in said Des Moines Union Railway Company,

"The said Purchasing Committee hereby guarantees the approval of the Des Moines & St. Louis Railroad Company of the transfer of said stock to said Hubbell within sixty days.

"In Testimony Whereof said Committee has caused these presents to be signed by its secretary this 11th day of February, 1890"; now, does that refresh your recollection as to whether Mr. Hubbell did purchase of the Purchasing Committee some stock?

A. Did this purport to have been read at the meeting of the directors?

Q. No, this was not read?

A. How would I get knowledge of this?

Q. Let me see if this does not suggest it, this is my theory at least, let me also read Exhibit 3: "Memorandum of agreement made between the purchasing Committee of the Wabash, St. Louis & Pacific Railway Company and F. M. Hubbell.

"Whereas, it is provided in the articles of incorporation of the Des Moines Union Railway Company that the Wabash, St. Louis & Pacific Railway Company shall nominate four of the directors of said Des Moines Union Railway Company, and

"Whereas the stock of said Des Moines Union Railway Company is now held by different parties and in different proportions from what it was when said articles were adopted,

"Now, therefore, it is agreed between the purchasing Committee of said Wabash, St. Louis & Pacific Railway Company (the successors of said Wabash, St. Louis and Pacific Railway Company) and F. M. Hubbell, who has acquired the ownership of one-eighth of the stock of the said Des Moines Union Railway Company, that said Purchasing Committee will consent to such change in said articles of incorporation as will permit one director of said company to be nominated by any person or corporation holding one-eighth of the stock of the said Des Moines Union Railway Company.

"In Witness Whereof said Purchasing Committee has caused these presents to be signed by its secretary this 11th day of February, 1890. O. D. Ashley, Sec'y, Purchasing Committee"; now, in the first place you will notice that one of these exhibits refers to an amendment to the articles, and you will remember that it was in this same year that this record, if it is right, shows that the articles were amended, and, in the next place, this Purchasing Committee guarantees the approval by the Des Moines & St. Louis of this transfer; now, what I thought was that perhaps this reference to the amendment to the articles in connection with your apparent presence at that meeting amending them, and also in connection with some action which my recollection is that you took part in of the Des Moines & St. Louis, might recall this to your mind so that you would remember this purchase?

A. I thought you were reading this as purporting to be a part of the proceedings of the meeting of the Des Moines Union?

Q. No, part of the Des Moines Union meeting was this: "C. M. Hays offered the following resolution", and this was the 8th of April, the same day that the stockholders amended the articles, "Resolved, that the shares of the Capital stock of this corporation of the par value of \$50,000 sold by the Purchasing Committee of the Wabash, St. Louis & Pacific Railway Company to F. M. Hubbell, which sale has been ratified by the Des Moines & St. Louis Union Railroad Company, be approved, and the transfer thereof to said Hubbell on the books of the company be and the same is hereby ordered"; now, my inference was that this was a part of the same transaction, and that it might refresh your recollection with reference to it?

A. No, I did not recall that all, until you told me it was on the records, and I don't recollect seeing this and should not assume it was a part of the record.

Q. And you probably knew of the purchase, if that is so?

A. Undoubtedly, if the records are correct.

Q. But if you did know it you have forgotten it?

A. Yes sir; wouldn't those, as a matter of fact, naturally form a part of the record?

Q. These two things? A. Yes sir.

Q. No, this was the contract with the Purchasing Committee. Do you remember at the same time that Gen. Dodge also bought one-eighth of this stock? A. No sir.

Q. Now, you don't know anything about the acquisition of five-eighths of this stock by F. M. Hubbell & Son, or F. M. Hubbell, Son & Co., from the Des Moines Northern & Western Railway Company?

A. I would have no means of knowing it.

Q. That was after your time—no, it was not, either, that was during your time?

A. I would have no means of knowing it unless it formed a part of the record of some meeting at which I was present.

Q. I want to call your attention to this from what purports to be a record of the meeting of the Des Moines Union?

A. Was I present?

Q. I will show it up to you in a moment. On October 4th, 1893, at a directors' meeting, at which you were not present, this appears: "The Des Moines, Northern & Western Railway Company, by its president, F. M. Hubbell, stated that it had found it necessary to transfer twenty-five hundred (2500) shares of their stock in the Des Moines Union Railway to F. M. Hubbell & Son, by stock certificate No. 26, dated October 4th, 1893, and asked that the directors of this company consent to the transfer above mentioned; whereupon it was moved by L. M. Martin that the board of directors of this company hereby consent to the transfer of twenty-five hundred (2500) shares of the stock of this company to the said F. M. Hubbell & Son as represented by stock certificate No. 26. Said motion was seconded by H. D. Thompson. Whereupon a vote was taken which resulted in the adoption of said resolution by the unanimous vote of all the directors present"; and also to the minutes of a short meeting of stockholders which was held January 25th, 1894, at which you were present, and at which it appears "On motion the minutes of the proceedings of all the meetings of the board of directors, stockholders, and the executive committee held during the year 1893, were read and approved, all of the acts of the board of directors and officers done during the year 1893 were confirmed and ratified"; now, does that refresh your recollection so that you can say whether you remember anything about the acquisition of this stock by Mr. Hubbell?

A. No, it does not, because that is the usual resolution ratifying all the proceedings, I don't know whether they were all read or not.

Q. That has been done ever since the company was organized, it is done now, and I am one of the directors now. Now, at that meeting that was held on January 25th, 1894, as at the preceding meeting, the stock present was listed, and it appears that F. M. Hubbell & Son holding 2500 shares were present, and isn't it your recollection that from that time on but one Wabash director was elected?

A. I would have to rely on the record on that.

Q. Let me read the record here of the next year—by the way, do you remember the fact that the record shows that you were chairman of the meeting in January, 1894? A. No sir.

Q. You wouldn't say you were not?

A. If the record was correct and says I was I would have no more to say.

Q. If you found that on the record you would find no warrant in contradicting it? A. No sir.

Q. Now, if you turn to the record of the next annual meeting, January 16th, 1895, that was still in your time, wasn't it?

A. Yes sir, that would be the last one I attended if I was present.

Q. It appears that it was adjourned twice on account of your absence, and at a short meeting on February 14th, 1895, you were present, and if that record shows that F. M. Hubbell & Son then held 2500 shares of stock you wouldn't say that was incorrect? A. No sir.

Q. In connection with what you said about Mr. Hubbell's purpose and statements, if, as a matter of fact, Mr. Hubbell had purchased this stock from the Wabash, and, if, as a matter of fact, the record shows he held 2500 of the shares, you don't mean to be understood as saying that he did not claim to own that stock, do you? A. No sir.

Q. You don't mean to be understood as saying that the Wabash Company claimed to own stock that the Purchasing Committee had sold to Hubbell, do you? A. No sir.

Q. Or any stock that the Purchasing Committee had sold to anybody else? A. No sir.

Q. You said that you did not remember of any difference between the Des Moines and Northwestern and the Wabash, or apprehend a possibility of it; do you remember a controversy as to how the interest on the bonds ought to be paid?

A. No sir.

At this point the further taking of testimony was adjourned until 11 a. m., December 1st, 1909.

A. E. MOONEY,
Commissioner.

Pursuant to adjournment, as above stated, on Wednesday, December 1st, 1909, the parties met and I resumed the taking of testimony as follows:

Present: J. L. Minnis, Esq., counsel for complainants, and N. T. Guernsey, Esq., counsel for defendants.

Counsel for complainants hands to the commissioner a copy of a letter dated New York, August 15th, 1898, addressed to F. M. Hubbell, Esq., Des Moines, Iowa, signed O. D. Ashley, and asks him to mark it Complainant's Exhibit 8 (as exhibits attached to complainants' bill and with the letter B), which is accordingly done.

Counsel for defendants states that defendants have in their possession the original of this letter and concede that such a letter was sent by Mr. Ashley to Mr. F. M. Hubbell at about the date shown on Exhibit 8 and admit that Exhibit 8 is a correct copy, subject to verification with the original hereafter, if desired.

Counsel for complainants offer in evidence Exhibit 8, which is in words and figures, as follows, to-wit:

(COMPLAINANTS' EXHIBIT 8.)

New York, Aug. 15, 1898.

F. M. Hubbell, Esq.,
Des Moines, Iowa.

Dear Sir:

I have yours of August 11th, enclosing certificate for 226 shares of the Capital Stock of the Des Moines Union Ry Co. of which stock you asked me to assign 128 shares to you. This is all right, if in the sale of the \$135,000. of bonds, which were divided into two lots of 67 and 68, the obligations for $\frac{1}{2}$ of the stock to each were made to you. The transfer, which you now request, covers the two lots, and my impression is that one of the lots was to go to Gen. Dodge. I have no doubt this is all right, but, of course, I shall want the two obligations for $\frac{1}{2}$ each of the stock to be returned to me, understanding that I am now to make the transfer which fulfills those obligations. If this is all right, please let me know, and I will return the certificate properly assigned. I suppose my signature as Secretary will be all you want. If not, it will take me some time to get the individual signatures of the Committee.

I notice that the authorized Capital Stock is \$2,000,000. Am I to understand that \$200,000 is the whole amount of stock issued?

Yours respectfully,

O. D. ASHLEY,
President.

Counsel for complainants hands to the commissioner a letter dated Des Moines, Iowa, August 19th, 1890, addressed to O. D. Ashley, President, 195 Broadway, New York, and purporting to be signed by F. M. Hubbell and asks him to mark it Complainants' Exhibit T, which is accordingly done.

Counsel for defendants states that defendants admit that the paper marked Complainants' Exhibit T is a letter in three sheets signed by the defendant Frederick M. Hubbell and was mailed to O. D. Ashley, President, at about its date.

Counsel for complainants offer in evidence Complainants' Exhibit T, which is in words and figures as follows, to-wit:

(COMPLAINANT'S EXHIBIT T.)

Des Moines & Northwestern Railway,
F. M. Hubbell, Pres't.

Des Moines, Iowa,
August 19, 1890.

O. D. Ashley, Pres't.,
195 Broadway, New York.

Dear Sir:

I have yours of August 15th and in reply have to say, that the one-quarter interest in the stock of the Des Moines Union, which was sold by the Purchasing Committee to F. M. Hubbell, together with the 135,000 of terminal bonds, was settled and disposed of some time ago. That you may understand this matter fully, I will give you a list of the stock which has been issued, and to whom.

The authorized capital is \$2,000,000, but the amount issued is \$400,000, and a one eighth interest represents 500 shares.

Originally your Committee were entitled to one-half of the stock, and when it came to be issued, the one quarter which was first sold to me, was issued in two certificates, and deducted from your half of the stock, namely:

No. 12, to F. M. Hubbell.....	500 shares
No. 14, to G. M. Dodge.....	500 shares.

The 400,000 of stock was issued on the 8th day of April, 1890, as follows:

No. 1, to Dodge	1 share,
No. 2, to Hubbell	1 share,
No. 6, to James F. How	1 share,
No. 7, to C. M. Hayes	1 share,
No. 9, to the Purchasing Committee	998 shares,

Total 1000 shares.

This being one fourth of the entire stock and belongs to the Purchasing Committee. Certificates Nos. 1 and 2 have been issued erroneously, No. 1 having been assigned in blank by Dodge, No. 2 is assigned in blank by me.

No. 3 to F. C. Hubbell for	1 share,
No. 4 to H. D. Thompson for	1 share,
No. 11 to D. M. & N. W. Railway Co.	998 shares,

Total 1000 shares.

which is the one fourth interest belonging to the Des Moines & N. W. Ry. Co.

No. 5 to L. M. Martin	1 share
No. 8 to A. B. Cummins	1 share
No. 10 to the D. M. & Northern Ry. Co.	998 shares

Total 1000 shares.

being one fourth which is owned by the Des Moines & Northern Railway.

No. 12 to F. M. Hubbell	500 shares
No. 14, to G. M. Dodge	500 shares

Total 1000 shares.

This is the 1000 shares of stock sold by your Committee to F. M. Hubbell, with the 135,000 of bonds.

Certificate No. 13, has never been issued and is cancelled in the stock book, for the reason that a mistake was made in it and it was thought better to cancel it than to change the face of the certificate. This makes 1000 shares which is all of the Capital Stock of the Company.

I prefer to have all of the members of the Purchasing Committee affix their signatures to the assignment of the 498 shares to me, being a part of certificate No. 9.

Please let me hear from you now whether this is perfectly plain and satisfactory.

Yours truly,

F. M. HUBBELL.

It is agreed by counsel that in taking the testimony in this case, including both the complainants' testimony and the defendants' testimony, copies of documentary evidence offered may be incorporated in the record and the parties may retain the originals in their possession, subject, however, to the right of either party to have the originals produced in lieu of the copies if desired, otherwise the copies are to be used in lieu of the originals and with the same force and effect as the originals.

Counsel for complainants hands to the commissioner a letter dated New York, October 6th, 1896, addressed to F. M. Huddell, Esq., Sec'y. Des Moines Union Railway Co., Des Moines, Iowa, and signed J. C. Ottenson, Sec'y., and asks him to mark it Complainants' Exhibit U, which is accordingly done.

Counsel for defendants states that it is conceded that Exhibit U is a letter press copy of a letter written by J. C. Ottenson, Secretary of The Wabash Railroad Company, under date of October 6th, 1896, to F. M. Huddell, Esq., Secretary of the Des Moines Union Railway Company and was mailed in due course, but that this admission is subject to the correction of this copy if it develops that defendants have the original of the letter in their possession and it should appear that the copy is not entirely accurate.

Counsel for defendants offers in evidence Complainants' Exhibit U, which is in words and figures as follows, to-wit:

(COMPLAINANT'S EXHIBIT U.)

New York, Oct. 6, 1896.

F. M. Huddell, Esq., Sec'y.,
Des Moines Union Ry. Co.,
Des Moines, Iowa.

Dear Sir:

Will you be good enough to let me know, for Mr. Ashley, the amount of Des Moines Union Ry. Co. stock originally issued to the Purchasing Committee, or to The Wabash Railroad Co., and give me transcript of all transfers made to date, and oblige,

Yours truly,

J. C. OTTENSON,
Secretary.

Counsel for complainants hands to the commissioner a letter dated October 9th, 1896, and addressed to Mr. J. C. Ottenson, Secretary, No. 195 Broadway, New York, and signed F. M. Huddell, Secretary, and asks the commissioner to mark the same Complainants' Exhibit V, which is accordingly done.

Counsel for defendants states that it is admitted that the signature to Exhibit V, a letter written under date of October 9th, 1896, is the genuine signature of F. M. Hubbell, and that this letter was transmitted by mail to Mr. J. C. Otteson, Secretary of the Wabash Railroad Company at or about its date.

Counsel for complainants offers in evidence Complainants' Exhibit V, which is in words and figures, as follows, to-wit:

(COMPLAINANT'S EXHIBIT V.)

The Des Moines Union Railway Company,
General Office.

F. M. Hubbell,
Secretary & Treasurer.

Des Moines, Iowa, Oct. 9, 1896.

Mr. J. C. Otteson, Secretary,
195 Broadway,
New York, N. Y.

Dear Sir:

I am in receipt of yours of the 6th inst. In reply have to say that there was originally \$200,000. of stock owned by the Purchasing Committee of the Wabash, St. Louis & Pacific R'y. Co. The Committee sold one half of the stock to G. M. Dodge and F. M. Hubbell, I think some time prior to April 28, 1890. There had never been any stock certificates, or stock issued until that date. At that time there was issued \$400,000. of stock, as follows:

1,000	shares	to the	Des Moines & Northern R'y. Co.
1,000	"	"	Des Moines & Northwestern R'y. Co.,
1,000	"	"	Purchasing Committee of the Wabash, St. Louis & Pacific R'y. Co.,
500	"	"	F. M. Hubbell, and
500	"	"	G. M. Dodge.

The stock of the Wabash Company was represented by certificate #9 for 996 shares, and 4 certificates for one share each were issued to qualify Directors in the Company to vote.

Afterward the Purchasing Committee sold 500 shares to me and the transfer was made August 22, 1890. There was assigned by the Purchasing Committee to me, out of certificate #9, 498 shares and there was re-issued to the Purchasing Committee certificate #15 for 498 shares which still stand in the name of that Committee. When this sale of 500 shares last named, to F. M. Hubbell, was completed the Committee then owned the following stock:

THE DES MOINES UNION RY. CO., ET AL.

Certificate #15 for 498 shares
 " # 6 to Jas. F. How, for..... 1 share,
 " # 7 to Chas. M. Hays, for..... 1 share,
 Total 500 shares.

On the 1st of February, 1895, certificate #6 was cancelled and re-issued to H. L. Magee, who now holds certificate #27 for one share of stock. On December 9, 1895, certificate #7 standing in the name of Chas. M. Hays was assigned to Jos. Ramsey, Jr., and re-issued to the last named person on that day, by certificate #28 which now stands in the name of Jos. Ramsey, Jr.

As I understand it, the Purchasing Committee now owns the following stock:

Certificate #15 for 498 shares,
 " #27 for 1 share
 " #28 for 1 share.
 500 shares.

Yours truly,

F. M. HUBBELL,
 Secretary.

At this point the further taking of testimony was adjourned, notice of the time and place of the next meeting to be given under the terms of the stipulation.

A. E. MOONEY,
 Commissioner.

Pursuant to notice given under the stipulation heretofore entered into in this case the further taking of testimony was resumed on December 15th, 1909, at the office of Guernsey, Parker & Miller, in the Fleming Building, Des Moines, Iowa.

Present: J. L. Minnis, Esq., and J. C. Cook, Esq., counsel for complainants, and N. T. Guernsey, Esq., counsel for defendants.

HORACE SEELY, being produced as a witness by complainants, after being duly sworn by F. A. Brown, a Notary Public within and for Polk County, Iowa, duly commissioned and qualified under the laws of Iowa to administer oaths at the time and place aforesaid, testified as follows:

Direct Examination

By Mr. Cook:

Q. Give your name, age, and present place of residence?

A. Horace Seely, 48 years of age, I reside at Glendale, a suburb of Los Angeles, California.

Q. Did you formerly reside at Des Moines, Iowa, and, if so, during what years?

A. I resided in Des Moines from 1881 until 1902 almost continuously.

Q. During that time were you employed by the Wabash, St. Louis & Pacific Railway Company, the St. Louis, Des Moines and Northern Railway Company, the Des Moines Northwestern Railway Company, and the Des Moines Union Railway Company, in the City of Des Moines, in any capacity, if so, state for what companies and in what capacity?

A. In June, 1883, I went to work for the Wabash, in Des Moines, as chief clerk and cashier of a local freight office, and I served in that capacity for the Wabash and St. Louis, Des Moines and Northern until November 1st, 1887, at which time I was made agent for the Des Moines Northern and Western, the Wabash and St. Louis, Des Moines and Northern, and continued as agent until some time in 1889 or 1890, I am not certain as to the date, when I was made in addition to that Superintendent of the Des Moines Union Railway, which position I held until February, 1893.

Q. So that, as I understand you, you have been Superintendent of the Des Moines Union from the year 1889 or early in 1890, until when? A. Until February, 1893.

Q. What were your duties while acting as Superintendent of the Des Moines Union?

A. I had charge of the property, the maintenance and operation of it.

Q. What, if anything, did you have to do with the keeping of the accounts of the Des Moines Union, and the rendering of accounts to the railroad companies that were then using the Des Moines terminal property?

A. I had charge, subject to an auditor, under me, of all the accounts of that work.

Q. Were you subject to the auditor or was he subject to you?

A. He was subject to me.

Q. During the time that you were thus in charge of the accounts of the Des Moines Union Railway Company were there any earnings made by that company in the way of rents received and in the way of charges rendered to other companies for switching service, I mean companies aside from the Wabash, or Des Moines and St. Louis, and the Des Moines Northwestern, and the Des Moines & Northwestern, and the St. Louis, Des Moines & Northern, subsequently the Des Moines and Northern, and subsequently the Des Moines, Northern and Western Railroad, I mean were there earnings from switching done for companies other than these?

A. We had earnings from the rents of houses and switching charges for cars placed for other lines.

Q. What disposition was made of these earnings by the Des Moines Union?

Defendants' counsel objects to the question as incompetent and not the best evidence, the books being the best evidence of the accounts and what was done with the earnings.

A. We credited them on the bills, on the interest bills, that is, first the bill was rendered for the full amount and whatever was collected during the month was credited on that bill to the different roads and the balance pro rated among the roads.

Q. Against what companies were these bills for interest rendered?

Defendants' counsel states that he makes the same objection, because the records and the bills themselves are the best evidence.

A. Against the Des Moines North-Western, the St. Louis, Des Moines & Northern and the Wabash.

Q. In other words, as I understand you, these bills were rendered to the companies that controlled the Albia Line, the Boone Line, and the Fonda Line?

Defendants' counsel states that he makes the same objection.

A. Yes, sir.

Q. These bills against these companies you say were for interest upon what?

Defendants' counsel states that he makes the same objection.

A. The outstanding bonds of the Des Moines Union Railway.

Q. What in addition, if anything, to the interest on these bonds was included in the bills rendered against the companies owning those three lines?

Defendants' counsel states he makes the same objection.

A. All expenses for operation.

Q. Operating the Des Moines Union?

Defendants' counsel states he makes the same objection.

A. Yes, sir.

Q. And maintenance of the Des Moines Union?

Defendants' counsel states he makes the same objection.

A. Yes, sir.

Q. Were these bills rendered by you under the direction of your superior officers of the Des Moines Union, and, if so, by whom, who were such superior officers?

Defendants' counsel states he makes the same objection and also objects as calling for a conclusion.

A. General G. M. Dodge, and what was termed the executive committee of the Des Moines Union, and Mr. F. C. Hubbell, as President of the Des Moines Union.

Q. Will you look at the bills which I now hand you and state whether or not those are some of the bills that were rendered by you as Superintendent of the Des Moines Union, to the Company that was then operating the Albia Line, being Des Moines Union bill #1315 for \$618.16; #1375 for \$683.46; #1435 for \$643.70; #1636 for \$320.53; #3080 for \$972.94; #3151 for \$978.10; #3154 for \$732.58; #3155 for \$948.09; #3212 for \$725.60; #3213 for \$1033.57; #3233 for \$796.55; #3234 for \$1540.52; #3267 for \$627.98; #3268 for \$1204.90; #3400 for \$924.30; #3401 for \$2121.20; #3471 for \$883.92; #3472 for \$1925.18; #3539 for \$980.82; #3543 for \$2081.11; #3637 for \$870.12; #3639 for \$1920.04; #3704 for \$783.44; #3706 for \$1943.56; #3786 for \$702.18; #3788 for \$1428.99, which bills are marked Complainant's Exhibits W, X, Y, and Z, and then Complainant's Exhibits AA to VV, inclusive?

A. Yes, they were bills rendered by me as Superintendent of the Des Moines Union against the Wabash Railroad Company.

The bills referred to are in words and figures as follows, to-wit:

COMPLAINANT'S EXHIBIT W.

In making settlement please refer to Auditor's Bill No. 1315.

Des Moines, Iowa, December 31st, 1889.

The Wabash Railroad Company,

St. Louis, Mo.

To The Des Moines Union Railway Co., Dr.

1889. For proportion of rental during

December 1889.

5% of \$462,000.00 \$23,100.00

One month

\$1925.00

Credit: Rental C. S. P. & K. C.			
Ry. Co.	500.00		
% switching collected..	88.00		
% rents collected	63.50	651.50	\$1273.50
Wheelage,			
Wabash 2375			
D. M. & N-W. 1585			
D. M. & N. 933			
Your proportion 4854%			618.16
Registered Month of	Folio		
Correct:	Approved:	Audited:	
	Horace Seely,	W. S. Godfrey,	
	Superintendent.	Auditor.	

If upon examination, an error be found in the amount of this bill, return it WITH ALL PAPERS to the Auditor for correction before adjusting.

COMPLAINANT'S EXHIBIT X.

In making settlement please refer to Auditor's Bill No. 1375.

Des Moines, Iowa, January 31st, 1890.

The Wabash Railroad Company,

St. Louis, Mo.

To The Des Moines Union Railway Company, Dr.

1890	For proportion of rental during month of		
	January, 1890		
	5% of \$462,000.00	\$23,100.00	
	One month	\$1925.00	
Credit: Rental C. S. P. & K. C.			
	Ry. Co.	\$500.00	
"	For switching collected.	86.00	
"	For rents	74.50	660.50 \$1264.50
	Wheelage,		
	Wabash 2253		
	D. M. & N. W. 1160		
	D. M. & N. 755 4168		
	Your proportion 5405%		683.46

Registered Month of	Folio.		
Correct:	Approved	Audited:	
	Horace Seely,	W. S. Godfrey,	
	Superintendent.	Auditor.	

If upon examination, an error be found in the amount of this bill, return it WITH ALL PAPERS to the Auditor for correction before adjusting.

COMPLAINANT'S EXHIBIT Y.

In making settlement please refer to Auditor's Bill No. 1435.

Des Moines, Iowa, February 28th, 1890.

The Wabash Railroad Company,

St. Louis, Mo.

To The Des Moines Union Railway Co., Dr.

1890: For proportion of rental during month of
February, 1890.

5% of \$462,000.00 \$23,100.00

One month \$ 1925.00

Credit: Rental of C. S. P. & K. C.

Ry. Co. 500.00

" For collection $\frac{1}{2}$ switch-
ing 86.00

" For rents &c collected. 82.50 \$668.50

\$1256.50

Wheelage.

Wabash 2120

D. M. & N. W. 1215

D. M. & N. 803 4138

Your proportion $5123\frac{1}{2}\%$ \$643.70

Registered Month of Folio

Correct:

Approved

Horace Seely,

Superintendent.

Audited:

W. S. Godfrey,

Auditor.

If upon examination, an error be found in the amount of this bill, return it WITH ALL PAPERS to the Auditor for correction before adjusting.

COMPLAINANT'S EXHIBIT Z.

In making settlement please refer to Auditor's Bill No. 1656

Des Moines, Iowa, May 31st, 1890.

The Wabash Railroad Company,

St. Louis, Mo.

To The Des Moines Union Railway Co., Dr.

1890: For proportion of following items to
be divided among all roads in month of
May

Passenger Depot:

Ticket clerk	\$ 110.00
Janitor	35.00
Baggage men	100.00
Mail carrier	35.00
1 duster 40c, 2 brooms 50c, 1 mat 20c, 1 bucket 35c.....	1.45
20 gallons H. L. Oil \$2.40, 12 lbs. waste 90c	3.30
Letterbox-material \$8.10, labor \$11.56.	19.66
Repairing steam pipes	4.24
Electric light fixtures.....	2.46
Electric light	8.99
2995' water at 11½.....	3.37
5400' gas at 1.80.....	9.72
200 bu. range coal .10.....	2.00
1500 lbs. ice .20.....	3.00

Freight Depot:

1 keg 20d nails.....	2.75
4 running plates	4.25
25 bu. range coal .10.....	2.50
18200 cu. ft. gas 1.80.....	32.76

General Offices:

2995 ft. water 11½.....	3.37
5400 " gas 1.80	9.72
1500 lbs. ice .20.....	3.00
20 bu. range coal .10.....	2.00
Electric light	8.99

N. G. Transfer:

Foreman	55.00
Labor, 283 hours at \$1.75.....	49.50
Labor, 1940 hours at 1.50.....	291.00
230' D. Pine, \$3.60, 3 brooms 75c, 2 tin- cups 10c, 2 buckets 70c.....	5.15

Forward 808.18

Forward.....		\$ 808.18	
Union Yard:			
Yard masters	185.00		
Foremen and switchmen	441.15		
Policemen	50.00		
5 gals. black oil 48c, 14 gals. sig. oil \$4.90, 20 gals. H. L. Oil \$2.40.....	7.78		
5 gals. M. S. Oil 75c, matches 10c, 3 lanterns 1.50, 5 globes 75c, 4 burners 40c	3.50		
Miscellaneous:			
Salaries Supt. and Auditor.....	40.00		
Printing and stationary.....	9.50		
Sprinkling streets 1½ mos. to June 1st, at \$15.00	22.50		
		\$1567.61	
Deduct			
Chicago, St. Paul & Kansas City %			
3254	510.10	\$1057.51	
Credit:			
For switching and rents collected....		218.00	
			839.51
Wheelage:			
Wabash	1958		
D. M. & N. W....	1399		
D. M. & N.....	1771	5128	
Your proportion 3818 %.....			320.53
Registered Month of	Folio.		
Correct:	Approved:	Audited:	
	Horace Seely,	W. S. Godfrey,	
	Superintendent.	Auditor.	

If upon examination, an error be found in the amount of this bill, return it With All Papers to the Auditor for correction before adjusting.

(COMPLAINANT'S EXHIBIT AA.)

In making settlement please refer to Auditor's Bill No. 3080.

Des Moines, Iowa, Dec. 31st, 1890.

The Wabash Railroad Co.,
St. Louis,
To The Des Moines Union Railway Co., Dr.

1890: For proportion of following Terminal expenses in December.

Pass Dep't:

Ticket clerks	\$ 110.00	
" " East Des M.	51.65	
Baggagemen	110.00	
Janitor	35.00	
Mail carrier	35.00	
Soap 10, wicks 01, L. Chim. 5, 2 brooms		
50, 2 gal H. L. 25.....	.91	
Door spring 21, water faucet 75.....	.96	
Water supply Aug. 1st to Dec. 31,		
33685 cu ft. \$1 $\frac{1}{8}$ per M.....	37.90	
Repairs to water closet.....	11.00	
1550 # ice, 20c	3.10	
(Pass. Depot) 9950 ft. gas 1.60.....	15.92	
36,300 ton coal 1.80.....	65.07	
(Gen'l. Offs) 9950 ft. gas 1.60.....	15.92	
Repairs on building, labor.....	8.55	
24 placard	2.50	\$ 503.48

Supt's. Office:

Salary of Supt.....	41.66	
" " clerks	75.00	
Ptg. & Sta. \$20.00, postage \$6.00, tele-		
grams 1.60, expense 35.....	27.95	x
1 high stool 1.00, 1 blank book for		
and'r. 1.25	2.25	
Official railway guide for 1891.....	5.00	151.86

Freight Depot:

Agents and clerks	693.35	
Warehouse foreman	65.00	
Check clerks	85.00	
Labor 125 2/10 1.50.....	187.80	
" 180 4/10 1.25.....	225.48	
Policeman	50.00	
2 letter file clips 3.20, hauling wght to		
scales 90	4.10	
Burner 10, door lock 75, lanterns 1.00,		
six lantn globes 90.....	2.75	
1 high stool 1.00, ptg & sta. 30.00....	31.00	
Repr on building, labor.....	2.67	
19400 ft gas 1.60.....	31.04	1378.19

(Forward)..... (2633.53)

N. G. Transfer:

Foreman	55.00	
Labor 195 8/10 days 1.50.....	293.70	
1 gal sig. 35, 1 gal H. L. 13, 1 keg nails		
3.15	3.63	
Hauling material .....	.50	
	<hr/>	
	352.83	

Credit: Transfg. 4 cars frt. for D. M. & K.

C. Ry. 12.00 340.83

Union Yard:

Yard master	110.00	
Foreman & switchmen.....	709.63	
1 globe 15, 1 broom 25, matches 61, 2		
butts 10 .....	.51	
27# wrot 95, 6 ft. oak 18, dr lock &		
key 75	1.88	
Sw. lamp 2.50, sw. key 15, 1 white globe		
15	2.80	
3 torches 60, 3 BC wick 66, 2 pick		
handles 30 .....	.96	
3 torches 60, matches 66, lantern 50,		
Lwick 63,	1.19	
1 broom 25, 2# hex nuts 10, 1# sheet		
rubber 10, matches 62.....	.47	
Hand oiler 30, lantern 50, globe 15,		
wicks 67.....	1.02	
Lantern 50, 8# frog bolts 32, 2# wash-		
ers 10 .....	.92	
5½ gal sig 1.93, 4¾ gal min. seal 5.50		
5 gal. H. L. 67.....	8.10	
4# wash 30, 86# wrot 3.01, 6# mach.		
steel 36	3.67	
	<hr/>	
	841.15	

Credit Dec. switching bill 200.00 641.15

Miscellaneous:

Ginsburg's bill for freight damaged in yard	5.00	
D. & R. A. Patchins, bill for med. services September 26th to Dec. 31st.	58.00	
D. & G. L. Bagley, bill for attendance, F. W. Hitchcock, injured Dec. 6....	10.00	
Truss for injured employee \$3.00, carriage injured employee 1.00.....	4.00	
Med. services for injured employees Litching \$3.90, Crawford \$16.25....	20.15	
Drayage, McNutt & Sons.....	1.75	98.90
		<u>\$3114.41</u>

Wheelage:

Wabash	2680	
D. M. & N. W....	1612	
D. M. & N.....	1700	
C. S. P. & K. C....	2588	8580

Your pro 3124%.....	972.94
Registered Month of	Folio.

Correct:

Approved:

Audited:

Horace Seely,
Superintendent.W. S. Godfrey,
Auditor.
(Achg. N.)

If upon examination, an error be found in the amount of this bill, return it With All Papers to the Auditor for correction before adjusting.

(COMPLAINANT'S EXHIBIT BB.)

In making settlement please refer to Auditor's Bill No. 3151.

Des Moines, Iowa, January 31, 1891.

The Wabash Railroad Co.,

St. Louis.

To The Des Moines Union Railway Co., Dr.

1891: For proportion of following terminal expense in January.

Pass Depot:

Ticket clerks	\$ 110.00	
Ticket clerk, East Des Moines.....	50.00	
Baggagemen	110.00	
Janitor	35.00	
Mail carrier	35.00	
10810 cu ft water at \$1.1/8 per thou-		
sand	12.16	
18100 cu ft gas at \$1.60 per thousand.	28.96	
Electric light meter 279, Jan'y. 8 to		
Feb. 2, 1891.....	25.17	
Scoville Plumbing Co's. bill for clean-		
ing pipes	1.00	
2 gal. sig. oil 70, 2 gal H. L. 25.....	.95	
Chair for despatcher's office.....	6.00	
Mops 20, soap 10, 2 L. Chim. 15, wicks		
02, 3 brooms 75.....	1.22	
Switch lock 55, 2 tin cups 05.....	.60	
Nails 04, 12 ft W. pine 36.....	.40	
Labor, carpenter, E. D. M. Depot....	.90	\$417.26

Supt. Office:

Salary Supt.	\$ 41.06	
Salary, clerk	40.00	
Ptg. & Sta. \$7.50, paper fasteners 30,		
To expense 2.00	9.80	
Legal cap 4.50, pins 40,	4.90	
Labor on Master Mechanic's office...	35.15	131.51

Freight Depot:

Agent and clerks	687.50	
Warehouse foreman	65.00	
Check clerks	347.55	
Labor 129 7/10 days at 1.25.....	162.12	
Policeman	50.00	
Stationery (Wabash Nov. bill)	16.47	
2 chairs 3.00, 96 ft. flooring 1.92, ...	4.92	
5000 tins seals and rivets 11.25, 20'		
white pine 00	11.85	
18600 cu. ft. gas at \$1.60	29.76	
Outside electric light Jany. 1 to Feby		
1, 1891	14.00	
Labor (carpenter)	2.40	1391.57

(Forward)

(\$1940.44)

N. C. Transfer:

Foreman	55.00
Labor 179 days at 1.50	268.50
2 brooms 50, 2 cups 25, bellcord 06,	
1 part for shovel 13 .....	.74
1 gal H. L. Oil 13 .....	.13
Labor Car Dep't.	1.65

 326.02

 Credit: Transferring 1 car salt for D. M.
 & K. C. Ry. Co

3.00

323.02

Union Yard:

Yard master	110.00
Foreman and switchman	758.45
3 lanterns 1.50, matches 04, red lant	
60, green lant 60,	2.74
Glass 35, 7 glass 84, 4 W. handles	
60, switch key 15,	1.94
Tin cups 03, W. Globe 12, Red Globe 22,	
Green globe 22, .....	.59
5 switch lamps 12.50, 1-2 gal. can 38,	
wicks 15,	13.03
4 brooms 1.00, bucket 35, switch locks	
1.10 burners 25	2.70
Chalk 20, 200 round pins (1100#)	
28.00, freight on same 2.50	31.30
300 links (3143#) 86.43, freight on	
same 7.50	93.93
8 gal sig. oil 2.80, 30 gal H. L. 3.75	
4# waste 30	6.85

 1021.53

Credit: % switching in January

203.00

818.53

Miscellaneous:

Bill of City of Des Moines, reprs. side-
walk, E. D. M.

3.57

100 engineer's trip books 12.50, com-
position on crew time card \$15.00 ..

27.50

1300 defective car cards 3.50

3.50

34.57

 3116.56

		Wheelage:	
	Wabash	.....2451	
	D. M. & N. W.	1221	
	D. M. & N.	...1465	
	C. St. P. & K. C.	2194	Your pro 3343%
Credit			1041.86
%	Error Electric light bills Nov. and Dec.		63.76
			<hr/> 978.10

Registered month of	.....	Folio	.....
Corrected:	Approved:	Audited:	
	Horace Seely,	Horace Seely,	
	Superintendent	Auditor.	
		(Achg. n.)	

If upon examination, an error be found in the amount of this bill, return it With All papers to the Auditor for correction before adjusting.

COMPLAINANT'S EXHIBIT CC.

In making settlement please refer to Auditor's Bill No. 3154.
Des Moines, Iowa, February 28, 1891.

The Wabash Railroad Co.,
St. Louis.

To The Des Moines Union Railway Co., Dr.

1891: For proportion of rental for February 1891

February 5% of \$497,000.00 \$24850.00
1 month 1/12 of 24850 \$2070.83

Credit a/c rents collected in Jany. & Feb.
1891 190.00

1880.83

Wheelage:			
Wabash	.....	2582	
D. M. & N. W.	..	1018	
D. M. & N.	....	1195	
C. St. P. & K. C.	.....	1834	
Total		6629	
Your proportion	3895%		\$732.58

Registered month of	.....	Folio	.....
Correct:	Approved:	Audited:	
	Horace Seely,	Horace Seeley,	
	Superintendent.	Auditor.	
		Actg. C.	

If upon examination, an error be found in the amount of this bill, return it With All Papers to the Auditor for correction before adjusting.

COMPLAINANT'S EXHIBIT DD.

In making settlement please refer to Auditor's Bill No. 3155.

Des Moines, Iowa, Feby. 28, 1891.

The Wabash Railroad Co.,
St. Louis,

To The Des Moines Union Railway Co., Dr.

1891: For proportion of the following Terminal
expenses in February 1891:

Pass Depot:

Ticket clerks	\$ 110.00	
Ticket clerk, East D. M.	50.00	
Baggagemen	110.00	
Janitor	35.00	
Mail carrier	35.00	
10500 cu ft. gas at 1.60 per thousand..	16.80	
8845 cu ft. water \$1.18 per thous.	9.95	
950 # Ice at 15	1.42	
2 brooms 50, 1 glass 32, 30 # wrot 1.05		
2 door knobs 10	1.97	
1 key 10, 1 gal H. L. 12 .....	.22	
1 toilet paper	11.40	
Labor, (repairs)	12.49	
20 tons coal (January) at 1.60	32.00	
22 tons coal (February) at 1.60	35.20	
4 tons coal (February) E. D. M. 1.60.	6.40	467.85

Freight Depot:

Agent and clerks	658.33	
Policeman	50.00	
Warehouse foreman	65.00	
Check clerks	85.00	
Labor	346.77	
19800 cu ft. Gas at 1.60	31.68	
1-8 qr. Register joint way bills	6.50	
1 case paper fasteners 25, 1 ribbon for typewriter 1.00	1.25	
Padlock 90, hasp 08, 2 lanterns 1.00, 6 W. Globes 90,	2.88	
Freight charges on seals and rivets changed in January .....	.63	
Bill of S. L. Fisher, Cashier, for stamps, messages, express and box rent January \$12.45, February \$4.70	17.15	
5 tons coal at 1.60	8.00	
Labor, repairs	7.60	

1280.79

Credit:

a/c double charge warehouse foreman in		
Jany.	65.00	1215.79
Ford.....		\$1683.64

Gen'l Office:

Salary, superintendent	\$ 41.66	
" clerk	50.00	
10500 cu ft gas at 1.60.....	16.80	
1-4 Qr. ledger 1.60, 5000 letterheads		
8.00 5000 envelopes 8.75.....	18.35	
300 time cards Des Moines Union No.		
60	4.50	
Wabash December bill for sta.....	9.87	141.18

N. G. Transfer:

Foreman	55.00	
Labor, 148 days at 1.50.....	223.50	
1060' pine 31.80, labor, repairs, trestle,		
7.43	39.23	
	<hr/>	
	317.73	

Credit: a/c transferring five cars for D.

M. & K. C. Ry. Co.....	15.00	302.73
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Union Yard:

Yard master	110.00	
Foreman and switchmen.....	736.70	
102 flat pins, 100 round pins, 1261# at		
2.60	32.79	
Freight on same	2.50	
Matches 02, 1 W. lantern 50, wicks 01,		
1 W. globe 15.....	.68	
5 gal. sig. 1.75, 1 gal. H. L. 12, 3 gal.		
W. S. 41.....	2.28	
	<hr/>	
	884.95	

Credit: a/c switching collected in Feb-

ruary	754.00	130.95
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Miscellaneous:

Repairs tenement houses, 1000 shingles 2.50, 2 shts tin 20, 10# nails 40, 150 ft. pine 4.50, labor 4.50.....	12.10	
Claim of D. B. Davidson, a/c freight stolen in December.....	10.00	
Claim Frank Hitchcock, personal in- jury in Dec.....	6.25	
Claim James Hartman, injured by switch eng. February 12.....	40.00	
Bills of L. J. Wells, carriage for in- jured engineer February 10th.....	.75	
Bill of Norman Lichty for medicines furnished Hitchcock & Hamilton in- jured employees	5.70	
Bill of J. W. Laird for medicines fur- nished Rabbitt, employee, injured about Feby. 10.....	4.25	
American Surety Company's premium of D. M. Ry. Co's. employees, bonds \$20,500.00 at .004%.....	82.00	
Same unpaid from last year.....	14.58	175.63
(Forward).....		(\$2434.13)

Wheelage:

Wabash	2582
D. M. & N. W...	1018
D. M. & N.....	1195
C. StP. & K. C...	1834
Total	6629

Your proportion 3895%... \$ 948.09

Registered Month of Folio

Correct:

Approved:

Audited:

Horace Seely,
Superintendent,

Horace Seely,
Actg. C.

If upon examination, an error be found in the amount of this bill, return it With All Papers to the Auditor for correction before adjusting.

COMPLAINANT'S EXHIBIT EE.

In making settlement please refer to Auditor's Bill No. 3212.

Des Moines, Iowa, March 31, 1891.

The Wabash Railroad Co.,
St. Louis,
To The Des Moines Union Railway Co., Dr.

1891

	For proportion of	
	rental for March,	
	1891, 5% of \$497,	
March	000.00	\$24,850.00
	One month, 1/12 of.	24,850.00 \$2070.84
Credit:	a/c rents collected,	
	March	90.50
		<hr/> 1980.34

Wheelage:
Wabash2861
D. M. & N. W...1220
D. M. & N.....1441
C. StP. & K. C...2287

7809

Your proportion 3664%..... \$ 725.60

Registered Month of Folio:

Correct:

Approved:

Audited:

Horace Seely,
Superintendent.

Chas. Seely,
Auditor.

If upon examination, an error be found in the amount of this bill, return it With All Papers to the Auditor for correction before adjusting.

COMPLAINANT'S EXHIBIT FF.

In making settlement please refer to Auditor's Bill No. 3213

Des Moines, Iowa, March 31, 1891.

The Wabash Railroad Co.,
St. Louis,
To The Des Moines Union Railway Co., Dr.

1891: For proportion of following terminal
March expenses in March, 1891.

Pass Depot:

Ticket clerks	110.00
" " E. D. M.	50.00
Baggagemen	110.00
Janitor	35.00
Mail carrier	35.00
18995 cu. ft. water at 1 1/8 per thousand	21.37
16200 cu. ft. gas at 1.60 per thousand ..	25.92
1140 # ice at 15c	1.71
Scoville Plumbing Co's. bill, repairs	
gas pipe	1.60
15 tons coal at 1.60	24.00
2 tons coal E. D. M. at 1.60	3.20
4000 # lump coal at 2.50	5.00
2 gal. H. L. 24, soap 15, cups 06, mops 20	.65
Repairs baggage room	2.95

426.40

Freight Depot:

Agent and clerks	743.33
Warehouse foreman	65.00
Policeman	50.00
Labor 123 days at 1.50	184.50
" 257 7/10 days at 1.25	322.14
3 #4 Full ironed trucks 17.70, freight	
on same 2.41	20.11
10400 cu. ft. gas at 1.60	16.64
14 tons coal at 1.60	22.40
8 gal. sig. 2.80, broom 25, matches 15. .	3.20
Stamps, messages and express	11.85
Day book 1.00, fasteners 25, counter	
books 2.00, pins 29	3.54
Paper 1.00, 2 doz. W. B. Imp. books	
14.75, 3 1/2 doz. memo books 2.25	18.00
9 quarts ink 7.25, mucilage 75, carbon	
2.33, pencils 2.16	7.49
Pens 1.52, imp. book 6.40, sealing wax	
28, ribbon 15	8.35
Erasers 30, oil sheets 36, bands 44, ruler	
07, fasteners 60	1.77
(Ford)	\$1478.32
	(\$1904.72)

Gen'l. Office:

Salary Superintendent	41.66
Salary, clerk	50.00
5000 envelopes 9.75, 4 tissue letter	
books 3.26, ink 30	12.81
	104.47

N. G. Transfer:

Foreman	55.00	
Labor 192 days at 1.50	288.00	
1 gal. sig. 35, shovel 1.05, water pail 25	1.65	
Labor, Machy. Dept.	2.46	

 347.11

Credit: Transferring 6 cars for D. M. & K.

C. Ry. Co.	18.00	329.11
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Union Yard:

Yard Master	110.00	
Switchmen	773.64	
1 gal. sig. 35, 2 gal. H. L. 24, 2 gal. W. S. 24, $\frac{1}{2}$ waste 0487	
2 Lant 1.00, burners 10, L. Globe 08, wicks 05	1.23	
Switch lamp 2.75, matches 05	2.80	
Labor, Machy. Dept. ....	.80	

 889.34

Credit: a c switching, March	474.00	415.34
------------------------------------	--------	--------

Miscellaneous:

Bill of R. A. Patchen, M. D., for surgical services D. M. Union employees	\$ 40.00	
Bill of City of Des Moines, repairs sidewalk	1.25	
Taxes 1800 West 100 ft. Lot 2 SW $\frac{1}{4}$ lot 8 in Sec. 9-78-24	25.98	67.23

 \$2820.87

Wheelage:

Wabash	2861
D. M. & N. W.	1220
D. M. & N.	1441
C. M. & St. P. Ry. 2287	7809

Your proportion 3664%	\$1033.57
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Registered Month	Folio
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Correct:

Approved:

Audited:

Horace Seely,

Chas. Seely,

Superintendent.

Auditor.

If upon examination, an error be found in the amount of this bill, return it With All Papers to the Auditor for correction before adjusting.

COMPLAINANT'S EXHIBIT GG.

In making settlement please refer to Auditor's Bill No. 3233.

Des Moines, Iowa, May 31st, 1891.

The Wabash Railroad Co.,

St. Louis,

To The Des Moines Union Railway Co., Dr.

1891:	For proportion of rental for May, 1891	
May	5% of \$497,900.00	24850.00
	One month's, 1/12.....	\$2070.83
Credit:	Account, rents collected during	
	May	260.50
		<hr/> 1810.33

Wheelage:

Wabash	3825
D. M. & N. W.	931
D. M. & N.	1408
C. St. P. & K. C.	2529 8693

Your pro .4400% \$796.55

Registered Month of Folio

Correct:

Approved:

Audited:

Horace Seely,

Chas. Seely,

Superintendent.

Auditor.

If, upon examination, an error be found in the amount of this bill, return it With All Papers to the Auditor for correction before adjusting.

COMPLAINANT'S EXHIBIT HH.

In making settlement please refer to Auditor's Bill No. 3234.

Des Moines, Iowa, May 31st, 1891.

The Wabash Railroad Co.,

St. Louis,

To The Des Moines Union Railway Co., Dr.

1891	For proportion of the following terminal
May	expenses in May, 1891:

Pass. Depot:

Ticket clerks	\$ 110.00	
Ticket clerk, East D. M.	50.00	
Baggagemen	110.00	
Janitor	35.00	
Mail carrier	35.00	
2 mops 20, soap 20, L. Chim. 08, L. globe 08, matches 02 .....	.58	
22 rolls paper 4.40, 19 yards border 76,	5.16	
10900 cu ft. gas at 1.60	17.44	
2985 cu ft. water at 1 1/8	3.35	
1580 pounds ice at .15	2.37	
Sprinkling streets during May 1891, ..	18.00	
1 gal sig 35., 3 gal H. L. 36, 7# waste 15, .....	.86	
Labor repairs	3.00	\$390.76

Freight Depot:

Agent and clerks	841.88	
Warehouse foreman	65.00	
Policeman	50.00	
Labor 113 8/10 days at 1.50	170.70	
Labor 367 days at 1.25	458.84	
1/2 doz. L. Globes 50, 6 gal. sig. oil 2.10	2.60	
Rim latch 65, 2 M. car seals 4.50, freight 25,	5.40	
19400 cu ft. gas at 1.60	31.04	
Stamps, messages and express	9.25	
Repairs rubber stamp	1.00	
1-8 qr. register joint way bills	6.50	
1 only mimeograph	17.00	
Time books 40, blotters 56, oilsheets 36, fasteners 40,	1.72	
Pens 90, muslin 60, sealing wax 28, blotters 60	2.38	
10 W. R. Imp. Books 6.00, ribbon 15, fasteners 60, carbons 1.20,	7.95	
1 doz. Imp. Books 7.80, 5 reams Imp. paper 4.00,	11.80	
2 qts ink 70, 3 doz. pencils 73, pen- holders 10	1.53	\$1684.20
(Ford)		(\$2075.35)

Genl. Office:

Salary Superintendent	41.66	
Salary Auditor	75.00	
1000 wreck reports 6.50, 1000 store keepers orders 1.00	7.50	
1000 letterheads	3.00	127.16

N. G. Transfer:

Foreman	55.00	
Labor 257 5/10 days at 1.50.....	386.25	
1 keg 8d wire nails 3.20, bucket 35.,	3.55	
Chalk 05, broom 25, 1 gal Sig. 35, 1 gal		
H. L.	12.77	
24 1/2 # 1 Manilla rope	3.31	
Labor, Mch. Dept. ....	.80	

449.68

Credit: a/c transferring 6.00 443.68

Union Yard:

Yardmaster	100.00	
Foreman and switchmen	765.65	
4 W. Lant. \$2.00, matches 05, wicks		
05, 2 gal sig. 70,	2.80	
2 gal. M. S. 24, 5 # waste 38, .....	.62	

869.07

Credit: a/c switching during May 148.00 721.07

Miscellaneous:

Repairs derrick, 4 lag screws 08, 50 ft.		
3/8" chains, \$4.30, labor 9.83	14.21	
Insurance, Health Elevator,	44.33	
Bill, Cent. Trust Co., disbursing		
money for coupons	61.37	
Advertising coupons D. M. N. Ry.		
Bonds	14.00	133.91

3501.17

Wheelage:

Wabash	3825	
D. M. & N. W. ..	931	
D. M. & N.	1408	
C. St. P. & K. C. ..	2529	8693

Your pro 4400%

1540.52

Registered Month ofFolio

Correct:

Approved

Audited:

Horace Seely, Chas. Seely,
Superintendent. Auditor.

If upon examination, an error be found in the amount of this bill, return it With All Papers to the Auditor for correction before adjusting.

COMPLAINANT'S EXHIBIT II.

In making settlement please refer to Auditor's Bill No. 3267.

Des Moines, Iowa, April 30th, 1891.

The Wabash Railroad Co.,

St. Louis.

To The Des Moines Union Railway Co., Dr.

1891:	For proportion of rental for April 1891		
April	5% of 497000.00	\$24850.00	
	One month 1/12 of	24850.00	2070.83
Credit:	a/c rents collected in April	73.00	
	Four months rent from D. M. & K. C. Ry.	200.00	272.00
			<hr/> 1797.83

Wheelage:

Wabash	.....	2783	
D. M. & S. W.	...	999	
D. M. & S.	....	1624	
C. St. P. & K. C.	.....	2267	7968
		Your pro 3493%	627.94

Registered Month of Folio.....

Correct:

Approved:

Audited:

Horace Seely, Chas. Seely,
Superintendent. Auditor.

If upon examination, an error be found in the amount of this bill, return it With All Papers to the Auditor for correction before adjusting.

COMPLAINANT'S EXHIBIT JJ.

In making settlement please refer to Auditor's Bill No. 3268.

Des Moines, Iowa, April 30th, 1891.

The Wabash Railroad Co.,

St. Louis,

To The Des Moines Union Railway Co., Dr.

1891: For proportion of the following Terminal
April expenses in April, 1891:

Pass. Depot :

Ticket clerks	\$ 110.00	
" clerk, East D. M.	50.00	
Baggagemen	110.00	
Janitor	35.00	
Mail carrier	35.00	
21010 cu ft water at 1 1/8 per thous. .	23.63	
14500 cu ft gas at 1.60 per thous.	23.20	
1445 lb ice at 15.	2.16	
7 tons soft coal at 1.60.	11.20	
1 ± 1166 Fairbanks Scale 56.40, Freight		
2.30	58.70	
1 baggage wagon 33.53, freight 5.46. .	38.99	
1 iron safe for ticket office.	70.00	
Repairs, clock, Despr's office.	3.50	
4 feather dusters 1.60, wicks 02, 3		
brooms 75, paper 02. ....	.70	
Labor repairs	4.00	\$ 578.47

Freight Depot :

Agent and clerks.	765.83	
Policeman	50.00	
Warehouse foreman	65.00	
Labor, 126 6/10 days at 1.50.	189.91	
" 343 2/10 days at 1.25.	429.00	
33100 cu ft gas at 1.60.	52.96	
5.1600 tons coal at 1.60.	9.32	
Switch boards 2.03, Labor, repairing		
same, 3 hrs and 40, 1.20.	3.23	
Wicks 05, L. Globe 08, broom 25, lan-		
tern 50. ....	.88	
Nails 04, 32 ft. pine 96, 3 gal sig. 1.85,		
3 gal. H. L. 30.	2.41	
3 reams W. B. Imp. Paper 2.40, 3 qts		
ink 1.20, 2 gro. pens 65.	4.25	
Rubber bands 20, 6 doz pencils 2.10, 1		
doz. pens 50.	2.80	
Mucilage 25, padlock 50. ....	.75	
Stamps, messages and express.	8.50	
Labor repairs	4.06	1588.90
Ford.		2167.37

	Ford.....	(92167.25
Gen'l. Office:		
	Salary Superintendent	41.66
	Salary, Auditor	75.00
	1500 letterheads 3.25, 200 monthly ex- pense blanks 13.75.....	17.00
	500 sheets 1 2 cap 7 $\frac{1}{2}$ at 15.....	1.05
	5000 manilla envelopes.....	7.00
		141.5
N. G. Transfer:		
	Foreman	35.00
	Labor 210 5 10 days at 1.50.....	315.75
	4 scarp shovels 4.20, $\frac{1}{4}$ barrel 1.00....	5.20
		375.95
	Credit: a/c transferring.....	15.00
		390.95
Union Yard:		
	Yard Master	100.00
	Switchmen	712.00
	100 links and 100 pins 1452 $\frac{1}{2}$ at 2.45, \$35.57, freight 3.23.....	38.80
	200 Standard pins 1316 $\frac{1}{2}$ at 2.45, 32- 24, freight 3.30.....	35.54
	Matches 67, 3 L. Globes 24, 6 $\frac{1}{2}$ chalk 40, .....	.71
	2 gal H. L. 24, 2 gal. V. 8. 24, 5 $\frac{1}{2}$ waste 41, .....	.89
	Labor, Machy. Dept.....	7.57
		895.51
	Credit: a/c switching.....	120.00
		775.51
Miscellaneous:		
	Bill of J. S. Nutt for repairs to Hart- man's wagon, injured by D. M. N. Ry. switch engine in February, 1891....	38.00
	Bill L. J. Wells for carriage hire, in- jured employee .....	.50
	Bill J. Barrick Patching Roof Co. house	10.00
	65 ft pine 1.95, nails 64, 1 4M shingles 75, labor 3.34.....	6.08
		358.58

Wheelage:

Wabash2783

D. M. & N. W. 999

D. M. & N.1624

C. St. P. & K. C. ...2562 7968

Your pro3493%

1222.59

Your proportion 1222.59

Credit: a/c insurance of bonded employees
for 1891, paid in February \$48.29,

Your proportion 17.69

\$1204.90

Registered Month of Folio.....

Correct:

Approved:

Audited:

Horace Seely, Chas. Seely,

Superintendent.

Auditor.

If upon examination, an error be found in the amount of this bill, return it With All Papers to the Auditor for correction before adjusting.

COMPLAINANT'S EXHIBIT KK.

In making settlement please refer to Auditor's Bill No. 3400.

Des Moines, Iowa, June 30th, 1891.

The Wabash Railroad Co.,

St. Louis.

To The Des Moines Union Railway Co., Dr.

1891: For proportion of rental for month

June of June, 1891:

5% of \$497000.00 \$24850.00

One month, 1/12.....\$2070.84

Credit: a/c rents collected..... 163.50

1907.34

Wheelage:

Wabash4551

D. M. & N. W. 942

D. M. & N.1618

C. St. P. & K. C. ...2280

Your pro 4846%

\$924.30

Registered Month of Folio.....

Correct:

Approved:

Audited,

Horace Seely,

Chas. Seely,

Superintendent.

Auditor.

If upon examination, an error be found in the amount of this bill, return it With All Papers to the Auditor for correction before adjusting.

COMPLAINANT'S EXHIBIT LL.

In making settlement please refer to Auditor's Bill No. 340L

Des Moines, Iowa, June 30th, 1891.

The Wabash Railroad Co.,

St. Louis.

To The Des Moines Union Railway Co., Dr.

1891: For proportion of the following terminal
June expenses in June, 1891:

Pass. Depot:

Ticket clerks	\$ 110.00	
Ticket clerk, East D. M.	50.00	
Baggagemen	110.00	
Janitor	35.00	
Mail carrier	35.00	
10000 cu. ft. gas at 1.60	16.00	
2490 cu. ft. water at 1.1/8	2.80	
2785 pounds ice at .15	4.17	
Sprinkling streets during June	18.00	
Plans for new Union Depot	200.00	
Chain ticket office, 1.25, ticket dater 4.84	6.09	
2 mops 20, 2 brooms 50, wicks 10, rings and staples 10 .....	.90	
Eng. Venn (1.00) 90, 1# Mace Green varnish 1.50, 50 c knobs 25	1.81	
40 1/2 ft. gutter 4.85, labor repairs 5.71.	10.56	\$600.33

Freight Depot:

Agent and clerks	832.64	
W. H. Foreman, 70.00, policeman 50.00	120.00	
Labor 149 3/10 days at 1.50	223.80	
Labor 366 days at 1.25	457.50	
18500 cu. ft. gas at 1.60	29.60	
1700# ice at 15c, 2.55, stamps 7.00	9.55	
4 qts. ink, 1.40, 2 doz. Memo, books 1.50, ink pad 25	3.15	
9 doz. pencils, 2.85, sealing wax, 42, mucilage, 25	3.52	
300 carbons 1.00, 4 reams imp. paper 320, pins 75	4.95	

Oil sheets 24, bands 14, 3 Imp. books		
1.80, sprinkler 90.....	3.08	
Empire wringer 4.00, 5 M. car seals 12.75..	16.75	
Repairs typewriter 1.75, ribbon 1.00, 16 hrs		
letterwriting	10.75	
1 stamp 50, 1/2 doz. Lant Globes 50, 5		
gal. Sig. 1.40.....	2.40	
Cleaning gutter 2.50, 800 ft. W. Pine		
16.00	18.50	
Labor	6.50	1742.69
(Ford).....		(\$2343.02)
Gen'l. Office:		
Salary, Superintendent	41.66	
Salary, Auditor	75.00	
Treas. Book 5.50, 11000 manilla en-		
velopes 19.00	24.50	
7500 letterheads	14.00	155.16
N. G. Transfer:		
Foreman	55.00	
Labor 384 7/10 days at 1.50.....	577.05	
6 links #88 chain 97, cup 03, M.		
Wrench 1.05	2.05	
File 20, 5# nails 18.....	.38	
Labor repairs	2.34	636.82
Union Yard:		
Yard Master	100.00	
Foremen and switchmen.....	815.25	
3 W. Lant. 1.50, 2 burners 10, matches		
05, wicks 05.....	1.70	
3 gal. H. L. 36, 3 gal. M. S. 36, 4#		
Waste 30	1.02	
	917.97	
Credit: a/c switching 92.00.....	92.00	825.97
Miscellaneous:		
Insurance D. M. Union Ry. property		
from June 27th, 1891, to June 27th,		
1892, \$55500.00 at .0034%.....	416.25	416.25
		4377.22
Wheelage:		
Wabash	4551	
D. M. & N. W.	942	
D. M. & N.	1618	
C. St. P. & K. C. 2280 Your pro 4846%	2121.20	
Registered Month of.....Folio.....		

Correct :	Approved :	Audited :
	Horace Seely,	Chas. Seely,
	Superintendent.	Auditor.

If upon examination, an error be found in the amount of this bill, return it With All Papers to the Auditor for correction before adjusting.

COMPLAINANT'S EXHIBIT MM.

In making settlement please refer to Auditor's Bill No. 3471.

Des Moines, Iowa, July 31st, 1891.

The Wabash Railroad Co.,

St. Louis,

To The Des Moines Union Railway Co., Dr.

1891: For proportion of rental for month

July of July, 1891:

5% of 497000.00.....	\$24850.00	
One month 1/12.....	24850.00	\$2070.83
Credit, a/c rents collected.....		145.50
		<hr/> 1925.33

Wheelage:

Wabash4262

D. M. & N. W.... 974

D. M. & N.....1754

C. St. P. & K. C...2293 9283

Your proportion 4951%... \$ 883.92

Registered Month of..... Folio.

Correct :	Approved :	Audited :
	Horace Seely,	Chas. Seely,
	Superintendent.	Auditor.

If upon examination, an error be found in the amount of this bill, return it With All Papers to the Auditor for correction before adjusting.

COMPLAINANT'S EXHIBIT NX.

In making settlement please refer to Auditor's Bill No. 3472.

Des Moines, Iowa, July 31st, 1891.

The Wabash Railroad Co.,

St. Louis,

To The Des Moines Union Railway Co., Dr.

1891: For proportion of the following terminal
July expenses in July, 1891:

Pass. Depot:

Ticket clerks	\$ 110.00	
Ticket clerk, E. D. M.....	50.00	
Raggagemen	110.00	
Janitor	35.00	
Mail carrier	35.00	
Electric light meter 279.95% 12.40 9600		
cu ft. gas at 1.60.....	15.36	
1830 cu ft water at 1 1/8.....	2.05	
3675 pounds ice at 15.....	5.51	
Sprinkling streets during July.....	18.00	
Scoville Plumbing Co's. bill, cleaning		
closet .....	.50	
E. D. Jones & Co's. bill, repairs.....	12.25	
Lock and key 70, glass 15, 1 gal H. L.		
12 .....	.97	
Labor, repairs	8.45	403.09

Freight Depot:

Agent and clerks.....	809.13	
Policeman	50.00	
W. H. foreman.....	70.00	
Labor 140 1/10 days at 1.50.....	210.15	
Labor 396 3/10 days at 1.25.....	495.99	
19500 cu ft gas at 1.60.....	31.20	
1840 pounds ice at 15.....	2.76	
Stamps 8.00, message 75, express 1.00.	9.75	
2 car records.....	20.00	
Fastener 60, pens 95, 3 qts ink 75, 4		
qts mucilage 1.00.....	3.30	
5 reams tissue 4.00, carbons 35, pencils		
45, 12 counter books 48.....	5.28	
10 yds. Imp. cloth 60, 3 stamps 2.45,		
repairs stamp 65	3.70	
Scoville Plumb. Co's. bill repairs gas		
leaks	1.50	
Inspector's bill testing scales.....	4.50	
Matches 04, 2 lant 1.00, 6 globes 48, 5		
gal. sig. 1.75, 15# waste 52.....	3.79	
Labor	6.60	1727.65
(Ford).....		(\$2130.74)

Gen'l. Office:

Salary Supt.	41.66	
Salary, Andr.	75.00	
6000 SK orders 4.75, 100 statements 3.75, 700 reports 5.45.....	13.95	
5000 manilla env.....	9.50	
Stamps for Treas. Feb. 14 to July	7.25	147.36

N. G. Trabsfer:

Foreman	\$ 55.00	
Labor 419 8/10 days at 1.50.....	629.75	
Labor, 17 days at 75.....	12.75	
1 steel wheelbarrow.....	1.75	699.25

Union Yard:

Yardmaster	100.00	
Foremen and switchmen.....	869.15	
300 link, 406 pins 5586# 139.65, freight 13.75	153.40	
5# W. Chalk 25, matches 09, 3 lant. 1.50, 4 lant. globes 32.....	2.16	
2 gal. H. L. 24, 2 gal. M. S. 24.....	.48	
	1125.19	

Credit: a/c switching	67.00	1058.19
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Miscellaneous:

Bill N. Lichty, medicines furnished in- jured emp.	3.75	
Bill D. M. & K. C. Ry. Reprs. House Cor. 7th & Cherry.....	11.25	
Claim Tiffany a/c damages to property caused by placing piling under D. M. River bridge during ice gorge Spring, 1891	75.00	
Reprs tool house 21# nails 74, 11 gal. M. Red 11.00, 2500 shingles 7.50, 29 1/2 gal. M. L. 3.04, 3# waste 32, 8# wrot 28, 10# tool steel 60, labor 27.22	31.86	

Repairing building for yardmaster...\$	6.75	
Labor on inventory 8 days at 1.25....	9.99	157.84

 4193.38

Wheelage:

Wabash4262

D. M. & N. W... 974

D. M. & N.....1754

C. St. P. & K. C...2293 9283

Your pro 4591%..... 1925.18

Registered Month of..... Folio.....

Correct:

Approved:

Audited:

Horace Seely,

Chas. Seely,

Superintendent.

Auditor.

If upon examination, an error be found in the amount of this bill, return it With All Papers to the Auditor for correction before adjusting.

COMPLAINANT'S EXHIBIT OO.

In making settlement please refer to Auditor's Bill No. 3539.

Des Moines, Iowa, August 31st, 1891.

The Wabash Railroad Co.,

St. Louis,

To The Des Moines Union Railway Co., Dr.

1891: For proportion of rental for month of
August August, 1891:

5% of \$500,000.00...\$25000.00 \$2083.33

One month 1/12.....\$2083.33

Credit: a/c rents collected..... 136.50

1946.63

Wheelage:

Wabash5294

D. M. & N. W.....1077

D. M. & N.....1850

C. St. P. & K. C...2287

10508

Your pro5038%..... \$980.82

Registered Month of..... Folio.....

Correct:

Approved:

Audited:

Horace Seely,

Chas. Seely,

Superintendent.

Auditor.

If upon examination, an error be found in the amount of this bill, return it With All Papers to the Auditor for correction before adjusting.

COMPLAINANT'S EXHIBIT PP.

In making settlement please refer to Auditor's Bill No. 3543.

Des Moines, Iowa, August 31, 1891.

The Wabash Railroad Co.,

St. Louis,

To The Des Moines Union Railway Co., Dr.

1891: For proportion of the following terminal
August expenses in August.

Pass, Depot:

Ticket clerks	\$ 110.00	
Ticket clerk, East D. M.....	50.00	
Baggagemen	110.00	
Janitor	35.00	
Mail carrier	35.00	
10000 cu ft gas at 1.60.....	16.00	
1405 cu ft water at 1 1/8.....	1.59	
3775 pounds ice at 15c.....	5.65	
Bill E. W. Smith & Co, repairs safe..	34.00	
3 sash cords 95, padlock 60, 2 brooms		
50, 2 mops 20.....	2.25	
Bell cord 12, 1 gal. H. L. 12.....	.24	
Labor repairs	1.00	\$ 400.74

Freight Depot:

Agents and clerks	808.60	
Warehouse foreman	70.00	
Policeman	50.00	
Labor 133 3/10 days at 1.50.....	202.95	
Labor 296 7/10 days at 1.25.....	370.86	
Outside electric lights		
21400 cu ft gas at 1.60.....	34.24	
2605 pounds ice at 15.....	3.90	
Spring for typewriter.....	.75	
1-8 qr. register joint way bills.....	6.50	
Bill S. L. Fisher, cashier, stamps, mes-		
sages, etc.	11.90	
5000 ear seals at 1.75.....	8.75	
Broom 25, 5 gal sig. 1.75, 2# waste		
15,	2.15	
Labor repairs	2.81	1573.41
(Ford).....		(\$1974.15)

General Office:

Salary Sup't.	\$ 41.66	
Salary, Audr.	75.00	
1000 stamped envelopes for Treas....	22.00	
Postal cards	5.00	
1000 storage receipts 3.50, 1000 letter- heads 3.50, 100 comp. statements 1.75	8.75	
5000 baggage tags	5.00	157.41

N. G. Transfer:

Foreman	65.00	
Labor 466 9/10 days at 1.50.....	700.35	
Labor 6 days at .75.....	4.50	
1 tape 60, rule 50.....	1.10	
File 15, 3 brooms 75, chalk 01, 1 keg nails 3.05	3.96	
Labor, Mch. Dept.....	.46	775.37

Union Yard:

Yard master	100.00	
Foreman and switchman	904.40	
Screws 10, 2 lant. 1.00, 2 burners 10 wicks 02, matches 06	1.28	
1 gal. sig. 35, 2 gal H. L. 24, 1 gal M. S. 12 .....	.71	

1009.39

Credit: a/c switching

42.00

967.39

(Ford)

(\$3874.32)

Miscellaneous:

Bill of R. A. Patchen M. D. for surgi- cal services rendered injured employ- ees from May 15 to Aug. 24,	52.00	
Bill G. W. McLain, damage to Garden a/c yard office	2.00	
Repair oil house and R. house, labor ..	21.51	
Repair, tool house	8.25	
Yard office:		
100 ft. 1 1/2" half round 90, 250 ft. 2 1/4" qr. round 1.50, 2000-foot ceiling 55.00	57.40	
68 ft. flooring 13.60, 6M shingles 17/10, 3 bundles siding 75, 6 bbl flooring 60,	32.05	
20# nails 60, screws 25, locks 65,	1.50	
2 rim locks 1.40, keys 40, 10# w. lead 80, 2 gal paint 4.00	6.60	

2 gal. B. Oil, 130, bucket 35, soap 05, whiting 01, 1 $\frac{1}{2}$ waste 08,	1.79	
Broom 25, feather duster 40, .....	.65	
96 ft. ceiling 2.64 88 ft. pine 53, 40 ft. poplar 1.60	4.77	
20 pcs moulding	2.50	
Labor	65.49	256.51
		<hr/> 4130.83

Wheelage:

Wabash	5294	
D. M. & N. W. ..	1077	
D. M. & N.	1850	
C. St. P. & K. C. .2287	10508	
Your pro 5038%		2081.11
Registered Month of	Folio	

Correct:

Approved:

Audited:

Horace Seely,

Chas. Seely,

Superintendent. Auditor.

If upon examination, an error be found in the amount of this bill, return it with All Papers to the Auditor for correction before adjusting.

COMPLAINANT'S EXHIBIT QQ.

In making settlement please refer to Auditor's Bill No. 3637.

Des Moines, Iowa, Sept. 30, 1891.

The Wabash Railroad Co.,

St. Louis.

To The Des Moines Union Railway Co., Dr.

1891: For proportion of rental for month of
Sept. September, 1891:

5% of 500000.00	25000.00
One month 1/12	\$2083.33
Credit a/c rents collected	128.00
	<hr/> 1955.33

THE DES MOINES UNION RY. CO., ET AL.

77

Wheelage:

Wabash	4388
D. M. & N. W. ..	1351
D. M. & N.	1809
C. St. P. & K. C. .	2312
	9860

Your pro 4450%

\$870.12

Registered Month ofFolio

Correct:

Approved:

Audited:

Horace Seely,

Chas. Seely,

Superintendent. Auditor.

If upon examination, an error be found in the amount of this bill, return it with All Papers to the Auditor for correction before adjusting.

COMPLAINANT'S EXHIBIT RR.

In making settlement please refer to Auditor's Bill 3639.

Des Moines, Iowa, Sept. 30, 1891.

The Wabash Railroad Co.,
St. Louis.

To The Des Moines Union Railway Co., Dr.

1891: For proportion of the following terminal expenses
Sept. in September.

Pass. Depot:

Ticket clerks	\$ 110.00	
Ticket clerk, East D. M.	50.00	
Baggagemen	110.00	
Janitor	35.00	
Mail carrier	35.00	
12100 cu ft. Gas at 1.60	19.36	
2175 cu ft. water at 1 1/8	2.45	
3630 pounds ice at 15	5.47	
Sprinkling streets during August	18.00	
1 case toilet paper	9.50	
1# hex nuts 06, 3/4# rubber 15, oil barrel 75, mops 20, broom 50,	1.66	
136# cast 2.72, 2 Gal H. L. 20, labor repairs 15.74	18.70	\$415.14

Freight Depot:

Agents and clerks	869.33	
W. H. Foreman	70.00	
Policeman	50.00	
Labor 143 days at 1.50	214.50	
Labor 385 5/10 days at 1.25	481.98	
23400 cu ft gas at 1.00	37.44	
2180 pounds ice at 15	3.27	
Tel rental		
44 hours letter writing at 50	22.00	
Stamps and messages and express	11.35	
Bullinger Guide 1.50, ink 25, mucilage		
50, inkwells 20, pens 1.11	3.50	
Pencils 2.00, 3 R. Imp. paper 4.00,		
fasteners 20, carbon 1.00, pens 06,		
mem. bks. 50, oil sheets 36	8.12	
Pens 1.65, pencils 3.30, carbons 39, ink		
2.00, seal wax 42, 1 doz Imp. books		
6.00	13.76	
Mem books 50, Imp. paper 4.00, paper		
files 2.00 ribbon 1.00	7.50	
Mem books 25, counter book 25 .....	.50	
Gas pipe 88, matches 01, 3 lant 1.50,		
lant globes 30, 3 ft. oak 09	2.78	
3 gal. sig. 1.05	1.05	\$1797.18
(Ford)		(\$2212.32)

General Office:

Salary, Supt.	41.66	
Salary, Audr.	75.00	
Rubber stamps 3.05, pens 45, journal		
6.48, 2 blk books 84	10.82	
Mucilage 50, letter file 25, 1 doz. coun-		
ter books 90	1.65	
1 doz. mem books 2.35, journal 2.00, in-		
voice book 2.00	6.35	
Letter file 50, env. 91, ink 35, pens 45 ..	2.21	137.69

N. G. Transfer.

Foreman	65.00	
Labor 297 9/10 days at 1.50	396.85	
40# nails 2.00, 2 kegs nails	7.90	

669.75

Credit: a/c labor performed for C. St. P.
& K. C. & Perkins & P.

16.35

653.40

Union Yard:

Yard master	100.00	
Foreman & switchmen	1276.65	

Wringer 2.00, chalk 40, 1/2 doz cuspidors 1.00 3.40
 1 flat top desk 14.00..... 14.00

 1394.05

Credit: a/c switching 129.00 1265.05

Miscellaneous:

Bill W. P. Graham, cleaning vaults,
 Co. houses 22.50

Bill R. A. Patchen, M. D. surgical
 services, Sept. 11.00

Bill Ingersoll & Howell, additional in-
 surance 12.75 43.25

 4314.71

Wheelage:

Wabash 4388

D. M. & N. W. 1351

D. M. & N. 1809

C. St. P. & K. C. 2312 9860

Your pro 4450% 1920.04

Registered Month of Folio

Correct:

Approved:

Audited:

Horace Seely, Chas. Seely,

Superintendent. Auditor.

If upon examination, an error be found in the amount of this bill, return it With All Papers to the Auditor for correction before adjusting.

COMPLAINANT'S EXHIBIT 88.

In making settlement please refer to Auditor's Bill No. 3704.

Des Moines, Iowa, October 31st, 1891.

The Wabash Railroad Co.,

St. Louis,

To The Des Moines Union Railway Co., Dr.

1891: For proportion of rental for month of
 October October 1891:

3% of \$50000.00 25000.00

One month one twelfth 2083.34

Credit: a/c rents collected 214.00

 1869.34

Wheelage:

Wabash	4305	
D. M. & N. W.	1498	
D. M. & N.	1947	
C. M. P. & K. C.	2523	16274
Your pro 4191%		\$ 783.44
Registered Month of	Folio	

Correct:

Approved:

Audited:

Horace Seely,

Chas. Seely,

Superintendent.

Auditor.

If upon examination, an error be found in the amount of this bill, return it With All Papers to the Auditor for correction before adjusting.

COMPLAINANT'S EXHIBIT TT.

In making settlement please refer to Auditor's Bill 3706.

Des Moines, Iowa, October 31, 1891.

The Wabash Railroad Co.,

St. Louis.

To The Des Moines Union Railway Co., Dr.

1891: For proportion of the following terminal
October expenses in October

Pass: Depot:

Ticket clerks	\$ 110.00
Ticket clerk, East D. M.	50.00
Baggage men	110.00
Janitor	35.00
Mail carrier	35.00
Policeman	45.00
14700 cu ft gas at 1.60	23.52
2000 cu ft water at 1 1/8	3.35
12 tons coal at 1.80	21.60
2600 pounds ice at 15	3.90
Ticket report book 3.00, 500 ticket reports 20.00, folio 1.50	24.50
Brush 1.05, 24 fine plugs 96, basket 20, shovel 70	2.91
Oil can 30, emery 66, ax 70, 19# cast 38	1.44
28# 20d nails 1.40, saw 75, 1 gal H. L. 12, 1 gal M. 8, 12	2.39
Labor, repairs	1.01

469.62

Freight Depot:

Agent and clerks	1055.00	
W. H. Foreman 70.00, policeman 50.00	120.00	
Labor 216 4/10 days at 1.50	324.60	
Labor 359 6/10 days at 1.25	449.50	
Labor 74 3/10 days (transferring car- loads) at 1.50.	111.45	
20600 cu ft. gas at 1.60	32.96	
One W. B. Press 12.00, less old one re- turned 4.00	8.00	
18 W. B. Imp. books 10.20, carbons 1.55, muslin 60, ink 25, pens 1.00	13.60	
Ribbon 15, 7 com. imp. books 2.80, Imp. paper 4.30, fasteners 1.00 ...	8.25	
Mem. books 88, pencils 1.32, penholders 10, blk. books 2.75, r. bands 44, pins 80,	6.29	
5 jts. 8. pipe 75, 2 elbows 20, 1000 trac- ing sheets 5.25, 5000 letterheads..	19.95	
Ink 10, 3 W. B. Imp. Books 2.10, mem. Books 30, 5 reams tissue 3.75, stamps and mesgr. 13.00	19.55	
2± 22646 tons depot scales 308.00, frt. from Chicago 15.68	323.68	
Broom 25, L. Globe 10, 2 gal Sig. 70	1.05	
1280± Ice at 15	1.92	

(Ford)

2495.80
(\$2965.42)

General Office:

Salary, Supt.	41.66	
Salary, Andr.	75.00	
6 journals 1.50, 3000 registers 7.75, 5000 env. 9.00, 1000 time checks 4.00	22.25	
11000 letterheads 27.00, 6000 env. 8.40, 300 defect cards 1.00, coal state- ments 4.50	40.90	
Interest on over-draft month October	5.69	
Stamps for Treas 2.00, sign Treas.		
Window 3.00	5.00	190.50

Union Yard:

Yard Master	100.00	
Foremen and switchmen	1325.66	
6000 links and pins 1740± at 23½	130.35	

6 car records 2.00, 12 ser books 7.00, 2 train registers 8.00	27.50
10 W. lanterns 5.00, wicks 13, L. Globe 10, Matches 05,	5.28
Burner 09, 7 gal H. L. 90, 3 gal M. S. 36, 16 $\frac{1}{2}$ Waste 1.20	2.51
4 $\frac{1}{4}$ gal Sig. 1.48	1.48
Whiting 05, gasoline 03, C. Hod 30, Thimble 10, labor repairs 28 .....	.76

	1593.54	
Credit: a/c switching	112.00	1481.54
		<hr/> 4637.46

Wheelage:

Wabash	4305	
D. M. & N. W. . .	1498	
D. M. & N.	1947	
C. St. P. & K. C. .	2523	10273
Your pro	4191%	1943.56
Registered Month of	Folio.	

Correct:	Approved:	Audited:
	Horace Seely,	Chas. Seely,
	Superintendent	Auditor.

If upon examination, an error be found in the amount of this bill, return it With All Papers to the Auditor for correction before adjusting.

COMPLAINANT'S EXHIBIT UU.

In making settlement please refer to Auditor's Bill No. 3786.

Des Moines, Iowa, Nov. 30, 1891.

The Wabash Railroad Co.,
St. Louis.

To The Des Moines Union Railway Co. Dr.

1891:	For proportion of rental for month of	
Nov.	November, 1891:	
	5% of \$50000.00	25000.00
	One month, 1/12	\$2083.34
Credit: a/c rents collected		170.50
		<hr/> 1912.84

Wheelage:	
Wabash	3393
D. M. & N. W. ..	1518
D. M. & N. ...	1904
C. St. P. & K. C. .	2428 9243
Your pro. 3679%	\$702.18
Registered Month of	Folio.

Correct:

Approved:

Audited:

Horace Seely, Chas. Seely,
Superintendent Auditor.

If upon examination, an error be found in the amount of this bill, return it With All Papers to the Auditor for correction before adjusting.

COMPLAINANT'S EXHIBIT VV.

In making settlement please refer to Auditor's Bill No. 3788.

Des Moines, Iowa, Nov. 30, 1891.

The Wabash Railroad Co.,
St. Louis.

To The Des Moines Union Railway Co. Dr.

1891: For proportion of the following terminal
Nov. expenses Nov. 1891:

Pass. Depot:

Ticket clerks	\$ 110.00
Ticket clerk, East D. M.	50.00
Baggage men	110.00
Janitor	35.00
Mail carrier	35.00
Policeman	45.00
1800 cu ft gas at 1.60.....	28.80
2025 pounds ice at 15.....	3.03
2535 cu ft water at 1 1/8.....	2.85
Sprinkling streets, Sept. 1 to Nov. 15..	45.00
Bill E. D. Jones & Co. for repairs....	9.10
Plumbing during Nov.....	3.25
6 tons soft coal at 1.80.....	10.80
2 mops and stick 30, wicks 02, matches 04, 3 gal H. L. 36, 12# waste 90..	1.62
Labor, repairs .....	.75

490.20

Freight Depot:

Agent and clerks	982.33	
Warehouse foreman	70.00	
Policeman	50.00	
Labor, 143 3/10 days at 1.50.....	214.95	
Labor, 344 1/10 days at 1.25.....	430.10	
20400 cu ft gas at 1.60.....	32.64	
300 pounds ice at 15.....	.45	
Stamps, messages and express.....	11.75	
Sealing wax 14, 4 qts ink 1.00, 10 W. B. Imp. Books 6.00, pins 1.24.....	8.38	
Fast 65, files 1.20, mucilage 50, pen- cils 2.01 memo books 1.65.....	5.96	
Paper 80, R. Bands 56, 1# pins 40, 10 Imp. books 6.00.....	7.26	
Carbons 75, erasers 30, oil sheets 30, 1 W. B. press 12.00.....	13.35	
Rubber stamps	3.15	
6000 #10 envelopes 10.80, 1000 tags 75, 7# mim. paper 1.05.....	13.60	
Bill of E. D. Jones, repairs.....	4.75	
2 No. 1 Chief stoves 46.00, 1 No. 2 Chief stove 17.00.....	63.00	
30 Jts. S. pipe 9.25, elbows 1.60, col- lars 10	10.95	
2 grates 1.00, zinc 1.20.....	2.20	
(Frd).....		(\$490.20)

Freight Depot: continued:

2 lant 1.00, mop 20, wick 01, 4 Gal H. L. 48	1.69	
3 dusters 1.20, 2 e hods 60, cup 05, shovel 30	2.15	
Repairing desks, 3 gal varnish 6.75, 1 gal filler 2.00, labor 15.00.....	23.75	
11 tons coal at 1.80.....	19.80	
		1972.21

General Office:

Salary, Supt.	41.66	
Salary, Audr.	75.00	
Stamps 2.00, ink 75.....	2.75	
10 M #10 Env. 11.30, 10 M #6 Env. 7.50	18.80	
Bill C. L. Dahlberg, letter writing for Treas	4.75	
1 #2 Chief Stove 17.00, 1 #6 Oak Stove 15.00	32.00	
2 zinc 2.75, 5 lengths pipe 2.00, goose neck 75, 3 collars 25.....	6.75	181.71

Union Yards:

Yardmen and switchman	1269.56	
Clock 8.00, 2 lamps 6.00, frt charges		
links and pins Oct. 8.38.....	22.38	
8 lant. 4.00, soap 15, 4 globes 40, wicks		
02	4.57	
Matches 06, 1# chalk 03, 2 gal. can 40,		
broom 25.....	.74	
5 1/2 gal Sig. 1.92, 6# waste 45	2.37	
		1299.62
Credit: a/c switching	51.00	
		1248.62
Wheelage:		
Wabash	3393	
D. M. & N. W....	1518	
D. M. & N.....	1904	
C. St. P. & K. C..	2428	9243
Your pro 36709%.....		1428.99
Registered Month of	Folio	

Correct:

Approved:

Audited:

Horace Seely,
Superintendent.Chas. Seely,
Auditor.

If upon examination, an error be found in the amount of this bill, return it With All Papers to the Auditor for correction before adjusting.

Q. Did you at the same time that you rendered the foregoing bills to the Wabash Company also render similar bills to the company that was operating the Boone line and the company that was operating the Fonda line, at the time.

Defendants' counsel objects to the question as incompetent, calling for secondary evidence, and not the best evidence.

A. I did.

Q. And, as I understand you, these bills were all rendered by you under instructions to do so by your superior officers in the Des Moines Union Railway Company? A. Yes, sir.

Cross-Examination

By Mr. Guernsey:

Q. I notice, Mr. Seely, taking this bill No. 3400 as an illustration, there are various papers attached to it; what was rendered by you is the bill, that is approved by you as Superintendent, that is right, isn't it? A. Yes, sir.

Q. That is true as to each one of these bills that have been shown you? A. Yes, sir.

Q. And the part of the bill that was rendered by you, or the part of the papers shown that was rendered by you, is what precedes your signature in connection with the approval?

A. Yes, sir, headed "Des Moines Union Railway Company Bills."

Q. But it is not headed that way?

A. Well, the billhead shows "Des Moines Union Railway".

Q. The bill is made out as a bill against the Wabash Railroad Company apparently in each instance, to the Des Moines Union Railway Company, is it not? A. Yes, sir.

Q. You did not make out these bills yourself?

A. No, sir.

Q. They were made out by the auditor? A. Yes, sir.

Q. By whom were they transmitted to the Wabash?

A. Usually by myself.

Q. You usually wrote the letters transmitting them?

A. Yes, sir.

Q. And after the bills were made out by the auditor they were handed to you for your approval, and you approved them? A. Yes, sir, I examined them and approved them.

Q. That is true as to all of them? A. Yes, sir.

Q. Now, you referred to instructions received from Gen. Dodge, were those verbal or written?

A. As a rule they were written instructions, sometimes oral.

Q. Well, I mean the instructions that you refer to with reference to these bills, he didn't give them frequently, did he?

A. No, sir.

Q. Now, were your instructions as to these bills received from Gen. Dodge, oral or written instructions?

A. Sometimes they would be oral and sometimes written.

Q. Can you remember any particular time when he gave you any instructions with reference to them?

A. I cannot give any specific time, no.

Q. Can you remember any specific thing that he ever told you with reference to making out these bills?

A. Well, we were instructed to make them out on a wheelage basis and keep records.

Q. Now, was that written or oral?

A. I think that was probably an oral instruction.

Q. Why do you say that was probably an oral instruction?

A. Well, because I don't remember of receiving a letter, and we talked the matter over.

Q. That was, of course, the whole basis of the making out of the bills? A. The wheelage proposition, yes, sir.

Q. The fundamental thing? A. Yes, sir.

Q. Now, as to what matters did he instruct you in writing in connection with the making out of these bills?

A. I don't know as I can specify anything particular now.

Q. As a matter of fact, can you remember any specific instructions from him or from F. C. Hubbell with reference to the matter? A. I know they were—

Q. I didn't ask you that, I asked you whether you can remember any specific instructions from him or from Mr. F. C. Hubbell with reference to it?

A. Yes, sir, I told you I remembered getting instructions for making the bills.

Q. Where did Gen. Dodge reside? A. New York City.

Q. How often was he in Des Moines when you were Superintendent?

A. Well, I don't know just how often he was there, I suppose he was here three or four or a half dozen times, I saw him that often, at least.

Q. Who, of the executive committee, gave you the instructions that you have referred to?

A. Well, it would be a joint committee, or any one of them would be respected somewhat.

Q. I didn't ask you that, you said you received instructions from them, I want to know whom you referred to?

A. That would be Mr. Hays or the Des Moines & North Western representative, or the St. Louis &—

Q. You don't know that as a matter of fact, you know they were your superiors? A. Yes, sir.

Q. And that is all you know about the Dodge business and the Hubbell business as far as you have any recollection on that now? A. That they delivered their orders?

Q. Yes, and that they were your superior officers?

A. Yes, sir.

Q. You don't remember detailed instructions received by you from any of them, do you?

A. I remember them in a general way.

Q. I know, but do you remember any specific conversation with Gen. Dodge or with Mr. Hubbell—take Gen. Dodge, he ceased to be president on the first of January, 1892, didn't he?

A. I think probably it was that year.

Q. You don't remember what year it was, do you?

A. Well, it must have been at that time.

Q. Do you remember what year it was?

A. I know he was president part of the time, and I don't know whether it was the first of the year or shortly after.

Q. Do you remember whether in 1891 or 1892 Gen. Dodge gave you instructions, or Mr. Hubbell did?

A. I think in 1891 General Dodge did.

Q. Do you remember that? A. Yes, sir.

Q. During what time was Mr. Hayes a member of this executive committee?

A. I think all the time I was there.

Q. Were there any changes in the membership of this committee during the period you were there?

A. It seems to me there was some but I can't say just what it was.

Q. You could not remember what years one man served or another man served on that committee, could you?

A. I don't recollect, no.

Q. Now, what is your present business?

A. Christian Science practitioner.

In the Circuit Court of the United States, Southern District of Iowa, Central Division.

Chicago, Milwaukee & St. Paul Railway Company, and the
Wabash Railroad Company, Complainants,
vs. In Equity.

The Des Moines Union Railway Company, Frederick M. Hubbell, Frederick C. Hubbell, and F. M. Hubbell & Son,
Respondents.

Now, on this 26th day of January, 1911, 10:30 A. M., the further taking of testimony in the above entitled cause was resumed and there were present:

Col. Wells H. Blodgett and J. L. Minnis, representing the Wabash Railroad Company,

J. C. Cook, representing the Chicago, Milwaukee & St. Paul Railway Company,

N. T. Guernsey, representing the Defendants; and the further taking of testimony on the part of Complainants was resumed under the following

Stipulation:

It is stipulated that the deposition of Mr. Edward B. Pryor and Col. Wells H. Blodgett, on behalf of the complainants, may be taken at this time and place, at Des Moines, Iowa, on the 26th day of January, 1911, before J. P. Blaise, as Special Examiner, the depositions to be taken in shorthand by the examiner, and the shorthand notes to be transcribed by him and certified to be a full, true and complete transcript of the testimony of the said witnesses, and this transcript to be filed as their deposition.

EDWARD B. PRYOR being called and duly sworn on the part of Complainants, and examined by Col. Wells H. Blodgett, testified as follows:

Q. Where do you reside and what is your occupation?

A. I reside at St. Louis, Missouri; am Vice President of the Wabash Railroad Company.

Q. How long have you been connected with the Wabash Railroad Company as an employe and official?

A. A little over 31 years.

Q. I suppose you meant the Wabash Railroad Company and its predecessors? A. Yes.

Q. In what department of the service have you been employed and in what department are you now employed?

A. In the Accounting Department originally, where I was first a clerk, and then Chief Clerk, and then Assistant Auditor, and I was afterwards made Assistant to the President, and then and now, Vice-President—afterwards and now Vice-President, in charge of the accounts.

Q. Have you ever had any official connection with the Des Moines Union Railway Company, one of the defendants in this case? A. I have, as a director of the company.

Q. How long have you been acting as a director of that Company?

A. Since January 1906; I think it was January 5, is my recollection.

Q. Have you, as an officer of the Wabash Railroad Company, or as a director of the Des Moines Union Railway Company had occasion to examine, and have you examined the accounts and account books of the latter Company? A. I have.

Q. Did you ever examine the books and accounts of the Des Moines Union Railway Company for the purpose of ascertaining what they showed respecting the receipts of cash money into the treasury of that Company, on account of the issue or sale of its capital stock? A. I have.

Q. Will you state what the books of the Des Moines Union Railway Company show with respect to the receipt of money in its treasury on account of the issue or sale of its capital stock?

Objected to on the part of the respondents as not the best evidence and calling for a conclusion, the books themselves being the best evidence. Further, that it is irrelevant and immaterial, because whether the stock was paid up and how it was paid up, or whether the books show it was paid up, is immaterial to this controversy.

Mr. Minnis: We ought to have the books, unless you agree to the production of the books.

Mr. Guernsey: I would rather have the books.

Mr. Minnis: Where are they?

Mr. Guernsey: I don't know. I don't know what books he means.

The Witness: I have examined all the books, the cash books, general ledgers and the journals.

Mr. Guernsey: From the organization down to date?

The Witness: Yes, sir. If you want to produce the books, I will say that the old cash books are in the possession of Mr. H. D. Thompson, in his office. The general ledgers and journals are in Mr. Hubbell's office.

A. I have examined the cash books of the Company in the Treasurer's office. I have examined the general ledgers and general journals in the Auditor's office, and none of those books show that any cash was at any time paid for the capital stock.

Mr. Minnis: Now, Mr. Guernsey, if you wish the books produced, they are in your possession and control, if you will produce them here.

Mr. Guernsey: Let us go ahead and we will see whether we want to or not.

Q. Did you ever examine the books and accounts of the Des Moines Union Railway Company for the purpose of ascertaining what they show respecting the payment of money out of its Treasury, to either James F. How, Granville M. Dodge, the Des Moines & St. Louis Railway Company, or the St. Louis Des Moines & Northern Railway Company, on account of real estate or other property conveyed by them or either of them to said Des Moines Union Railway Company? A. I have.

Q. Will you state what the books and accounts of the Des Moines Union Railway Company show respecting the payment of money out of its treasury, either to said How, to said Dodge, to the Des Moines & St. Louis Railway Company, or the St. Louis, Des Moines & Northern Railway Company, on account of property conveyed to it by them or either of them?

Respondents interpose the same objection as last above made.

A. The books do not show that any money was paid out of the Treasury of the Des Moines Union Railway Company to any of the parties named.

Q. State, if you know, whether the books of the Des Moines Union Railway Company have been so kept as to show in detail the payments made from time to time on account of interest on the bonds of said Company since the beginning of the year 1889? A. They do.

Q. State if you know, either from your examination of said books, or otherwise, how and by whom the funds necessary to meet and pay the interest on said bonds, since the beginning of the year 1889 have been supplied?

Objected to for the same reasons; also because it calls for a conclusion on the part of the witness.

A. The funds were furnished by the railroad companies, parties to the agreement of May 10, 1889—the Wabash, St. Louis & Pacific, the Des Moines & Northwestern and the St. Louis, Des Moines & Northern, and their successor companies?

Q. On what basis?

A. On the basis of wheelage. I should have said in giving the names, the Des Moines & St. Louis, the Des Moines Northwestern, the St. Louis, Des Moines & Northern and their successors.

Q. State if you know whether the books of the Des Moines Union Railway Company have been so kept as to show in detail the payments made by it since the beginning of the year 1889, on account of maintenance and repair of the tracks, depots, round houses, engine houses, and other terminal properties used by the plaintiffs in the City of Des Moines, and commonly known as the tracks and terminals of the Des Moines Union Railway Company in said city.

A. They do; they have been so kept and do show the detail.

Q. State if you know, either from an examination of said books or otherwise, how and by whom the funds necessary to meet and pay for the maintenance and repair of the tracks, shops, round houses and other terminal properties, since the beginning of the year 1889 have been supplied?

Same objection.

A. By the railroad companies named in the answer to the last question.

Q. You mean the companies party to the contract of 1889 and their successors? A. Yes, sir.

Mr. Minnis: You better name those companies, because the Des Moines Union was a party to that contract.

A. The funds were furnished by the Des Moines & St. Louis, the Des Moines & Northwestern, the St. Louis, Des Moines & Northern and their successor companies.

Q. State if you know, whether the books of the Des Moines Union Railway Company have been so kept as to show in detail the payments made from time to time, on account of general and special taxes levied upon or against the terminal prop-

erties mentioned in the preceding interrogatories, since the beginning of the year 1889?

A. They have been so kept and show the same in detail.

Q. State, if you know, either from your examination of said books or otherwise, how and by whom the funds necessary to meet and pay said taxes, since the beginning of the year 1889, have been supplied.

Same objection.

A. By the Des Moines & St. Louis Railroad Company, the Des Moines & Northwestern, the St. Louis, Des Moines & Northern, and their successor companies.

Q. You mean successors in title to the different railroads?

A. Yes.

Q. State, if you know, whether the books of the Des Moines Union Railway Company, since the beginning of the year 1889, have been so kept as to show minutely the cost of operating the engine houses and their appurtenances, including the cost of turning and housing the engines, the cost of furnishing water and fire and the cost of wiping and washing the engines, and the cost of firing them up?

A. They do. The books have been so kept and show that information.

Q. You stated, Mr. Pryor, that the funds required to pay interest on bonds, taxes and maintenance and repair of property, had been furnished by the railroad companies you have mentioned. Now, in what proportion have they contributed?

A. In the proportion of their wheelage.

Q. Wheelage use of the property?

A. Yes, sir; wheelage use of the property.

Q. Now state, if you know, either from your examination of said books, or otherwise, how and by whom the cost of operating the engine houses and their appurtenances, the cost of turning and housing the engines, the cost of furnishing water and fire, the cost of wiping and washing the engines, and the cost of firing them up, has been paid since the beginning of the year 1889?

Same objection.

A. They have been paid by the railroads for whom the facilities were furnished, on the basis of engines in and out of the round house, the proportion chargeable against the switch engines using these facilities being paid by the Des Moines & St. Louis, the Des Moines Northwestern, and the St. Louis, Des Moines & Northern Railway Companies, or their successors, on the basis of the wheelage use of the property.

Q. The cost of caring for and housing the engines used by the Des Moines Union has been on a wheelage basis?

A. Yes, sir.

Q. And the other expenses have been distributed according to the number of engines housed and cared for?

A. Yes, sir.

Q. State, if you know, whether the books of said Des Moines Union Railway Company have been so kept as to show in detail the amount of repairs on engines and other work done by it from time to time, since the beginning of the year 1889, for the plaintiffs in this case and their predecessors in the use of said terminals?

A. They have been so kept.

Q. State, if you know, from your examination of said books or otherwise, how the repairs on engines and other work done from time to time by the Des Moines Union Railway Company for the plaintiffs in this case and their predecessors in the use of said terminals, have been paid for?

Same objection.

A. They have been paid for by the railroad companies.

Q. On what basis?

A. On the basis of cost.

Q. State, if you know, whether the books of said Des Moines Union Railway Company have been so kept as to show in detail the amount of fuel and other material furnished from time to time by the Des Moines Union Railway Company to the plaintiffs in this case and their predecessors in the use of said terminals in the city of Des Moines, since the beginning of the year 1889?

A. The books have been so kept and show the information in details.

Q. State, if you know, from your examination of said books, or otherwise, how the fuel and other material furnished by the Des Moines Union Railway Company to their predecessors in the said terminals have been paid for?

Same objection.

A. They have been paid for by the companies for whom the material was furnished on the basis of cost.

Q. Do you know from your examination of the books of said terminal company, whether any engines or cars have been acquired for the use of said terminal properties, since the beginning of the year 1889, and if any have been acquired, state if you know how and by whom they were paid for?

A. There have been a number of switch engines and some few cars acquired, and the engines have been paid for partly by the Des Moines & St. Louis the Des Moines & Northwestern and the St. Louis, Des Moines & Northern and their successors on the basis of wheelage. Some of the engines have been paid

for partly by the use of bonds of the Des Moines Union Railway Company, and the balance paid by the three companies just mentioned; and other engines have been paid for out of the revenue accruing from switching, rental of houses, etc.

Q. The revenue derived by the Des Moines Union Railway Company from the switching and handling of cars, is that a part of the revenue that is referred to in the resolution and proceedings of the Des Moines Union Railway Company as "surplus earnings" of that Company or "Surplus earnings" in that company?

A. Yes, sir.

Q. When cars and traffic have been switched and handled over the terminals since the beginning of the year 1889, for the plaintiffs in this cause, what engines have been employed in that service?

A. The switch engines that I have just mentioned.

Q. When cars and traffic have been switched and handled over said terminals for others than the plaintiffs in this suit—the other question related to the plaintiffs—when cars have been switched and handled over said terminals for other than the plaintiffs in this suit, since the beginning of the year 1889, what engines have been employed in that service?

A. The same engines.

Q. State, if you know, either from your examination of the books of the Des Moines Union Railway Company, or otherwise, how and by whom the expenses of the switching service performed for all parties by the Des Moines Union Railway Company, such as the wages of engineers, firemen, switchmen and yardmen, have been paid since the beginning of the year 1889?

Objected to as incompetent, irrelevant and immaterial, because the obligations and rights of the parties are fixed by written contracts.

A. They have been paid for by the Des Moines & St. Louis, the Des Moines & Northwestern, the St. Louis, Des Moines & Northern, and their successor companies.

Q. You mean their successors in the use of the terminals?

A. In the use of the terminals.

Q. State, if you know, how and by whom, coal, water, oil and other material, consumed in switching and moving engines, cars and traffic in the yard and over said tracks and terminals in Des Moines, have been paid for since the beginning of the year 1889?

Same objection.

A. By the same companies named in the answer to the last question.

Q. State, if you know, from your examination of said books or otherwise, how and by whom, the salaries and wages of the officers and employes engaged in operating and maintaining, repairing and managing the said terminals have been paid since the beginning of the year 1889?

Same objection.

A. By the same companies, viz: the Des Moines & St. Louis, the Des Moines & Northwestern, the St. Louis, Des Moines & Northern and their successor companies in the use of the terminals.

Q. If there have been any other expenses than those already mentioned connected with the maintenance, operation and repair of said terminals, including terminal station, freight and passenger depot, depot grounds, round houses, tracks, transfers and other properties, excepting such expenses as were connected with housing and caring of the engines, state, if you know, how and by whom they have been paid.

Same objection. Also as being irrelevant and immaterial.

A. The expenses of every nature have all been paid by the Des Moines & St. Louis, the Des Moines & Northwestern, the St. Louis, Des Moines & Northern, and their successors in the use of the terminals.

Q. I will ask you whether the expense of operating and maintaining the terminal tracks and properties generally, have been paid by the companies you mentioned, on the same basis as they have paid for maintaining and operating the engine houses?

Same objection.

A. With the exception of the payments made by the companies for repair, other than engine and round house expenses and the fuel and other supplies furnished to their own companies direct, all of the expenses have been paid by the companies named on the basis of wheelage.

Q. Did you except from your answer the cost of maintaining the engine houses, the expense incurred in operating and managing the engine houses, were they paid on the basis of wheelage?

A. Yes, they are paid on the basis of the expense of operating them; they are all paid on the basis of wheelage.

Q. But the cost of operating the engine houses, how is that expense distributed among the parties, the engine houses?

Same objection.

A. On the basis of engines in and out of the house.

Q. The number of engines?

A. The number of engines in and out of the house by each party.

Q. State, if you know, from your examination of said books, or otherwise, what sources of revenue the Des Moines Union Railway Company now has, or has had, since the beginning received

of the year 1889, aside from the rentals by it from other railroad companies for the use of said tracks and terminal properties in Des Moines, rentals received by it for the use of terminal buildings and other properties conveyed to said company, and the revenues received by it for service in switching, handling and moving and storing cars, and trackage?

Same objection.

A. The rentals collected by it for the use of terminal buildings and other properties, and the revenues received by it for the services in switching, handling, moving and storing cars and traffic, and the privileges in the Union Station, and the collections made by it for demurrage on cars, covered its entire source of revenue. In other words, it has no other revenues than those mentioned.

Q. None other than those you mentioned?

A. No, sir.

Q. State, if you know, what proportion of the cost of producing the revenue collected by the Des Moines Union Railway Company for switching, handling, moving and delivering cars and traffic over said tracks and terminals in and about the city of Des Moines, has been paid by the complainants and their predecessors in title, and in the use of said property since the beginning of the year 1889?

Same objection.

A. The companies have paid the entire cost of producing the revenue.

Q. Did you include in your answer the revenue received from other railroad companies than the proprietary companies?

A. I don't think that is what Mr. Minnis is getting at.

Q. Did the Des Moines Union Railway Company receive any compensation for handling and switching the cars of the railroad companies parties to the agreement of 1889?

Objected to as incompetent and calling for a conclusion, and because the agreement is the best evidence.

A. No, it does not. The proprietary companies paid to the Des Moines Union Railway Company all the expenses, but I have not regarded that as a source of revenue.

Q. Did you include in your answer the revenues received by the terminal company from other railroad companies than those who were parties to the agreement of 1889 and their successors? A. No, I did not.

Q. That is a source of revenue?

A. My answer contemplated explaining what was considered as surplus earnings. But there were other revenues received by the Des Moines Union Railway Company from railroad companies for the use of the terminals, but these amounts so collected were applied or credited on the monthly bills of the proprietary companies.

Q. By the proprietary companies, you mean the companies parties to the agreement of 1889 and their successors?

A. Yes, sir.

Mr. Minnis:

Q. I ask you to restate the sources of revenue of the Des Moines Union Terminal. That includes all sources of revenue, regardless of whether it is credited on the bills of the proprietary companies or not.

A. The sources of revenue of the Des Moines Union Railway Company are:

First, the amounts collected of the Des Moines & St. Louis, the Des Moines & Northwestern, and the St. Louis, Des Moines & Northern railroad company, and their successors in title in the use of the terminals, reimbursing the Des Moines Union Railway Company for the expenses of every nature.

Second, certain rentals collected from railroad companies, such as the Chicago, Burlington & Quincy, the Chicago, Great Western, the Minneapolis & St. Louis, the St. Paul & Des Moines, for fixed monthly amounts, which amounts are credited on the monthly bills of the complainants and their predecessor companies.

Third, the revenues from the rentals of buildings and revenues received for service in switching, handling, moving and storing cars and traffic; collections made for privileges in the Union Station, and demurrage charges collected on cars, detained cars. Does that answer your question?

Q. Have you mentioned all the sources of revenue of the terminal company? A. I think I have.

Q. Now, I will ask you again to state, if you know, what proportion of the cost of producing the revenue collected by the Des Moines Union Railway Company for switching, handling, moving and delivering of cars and traffic over said tracks and terminals in and about the City of Des Moines, has

been paid by the complainants and their predecessors in title since the beginning of the year 1889?

Objected to as incompetent, because calling for a conclusion, and irrelevant and immaterial, and also incompetent, because offered for the purpose of changing a written contract between the parties.

A. The entire cost has been paid by the plaintiff companies and their predecessors.

Q. State if you know, either from your examination of said books, or otherwise, whether the terminal properties in Des Moines have been operated since you have been familiar with them, in accordance with the terms of any particular contract between the Des Moines Union Railway Company and the railroad companies using said terminals?

A. They have. Since May 10th, 1889, they have been operated in accordance with the terms of the contract of that date, between the Des Moines Union Railway Company, the Des Moines & St. Louis Railroad Company, the Des Moines & Northwestern Railroad Company, and the St. Louis, Des Moines & Northern Railroad Company, and their successors in the title and use in the terminals.

Q. Now, I ask you to state if you know whether the accounts between the railroad companies you have just mentioned, and the Terminal Company have been made up by the Terminal Company and paid by the railroad companies using said terminals in accordance with that contract you have just mentioned?

A. They have.

Q. State if you know, from your examination of said books or otherwise, how and by whom the moneys that have been from time to time paid out by the Terminal Company, on account of injuries occasioned to persons and property in the operation and use of said terminals since the beginning of the year 1889, have been provided.

Same Objection.

A. They have been provided by the companies named, the Des Moines & St. Louis, the Des Moines & Northwestern, the St. Louis, Des Moines & Northern, and their successors in title in the use of the terminals, on the basis of wheelage.

Q. Now, Mr. Pryor, I will ask you again to state the revenues that have been referred to in the proceedings of the Des Moines Union Railway Company as "Surplus Earnings"?

A. They were the revenues derived from the switching of cars, the collections made for the use of privileges in the Union Station, and demurrage collections, and the rentals of buildings of the Company.

Q. Mr. Pryor, were the revenues or funds collected by the Des Moines Union Railway Company, and which you have designated as "surplus earnings", ever credited on the monthly bills rendered by the terminal company against the railroad companies that were using said terminals under the contract of May 10, 1889, if so, state, if you know, when the terminal company ceased to so credit?

Objected to as incompetent and immaterial; incompetent if offered for the purpose of modifying the terms of the contract between the parties, the contract itself being clear.

A. They were so credited on the monthly bills from the time there were any such earnings up to the first of December, 1891.

Q. Up to when?

A. 1st of December, 1891.

Q. Do you know, from your examination of said books, or otherwise, how the so-called "surplus earnings" of the Terminal Company have been disposed of since on or about the 1st day of December, 1891?

A. They have been held by the Des Moines Union Railway Company, but that Company has charged against these so-called "surplus earnings" amounts from time to time for additions and betterments to the property, and the cost of switch engines, etc.

Q. Then since on or about the 1st day of December, 1891, they have not been credited on the bills of the railroad companies using the property under the contract of 1889 and their successors?

A. No, sir; they have not.

Q. Do you know from your examination of said books, or otherwise, whether since May 10, 1889, any money has been paid to the Des Moines Union Railway Company by other railway companies under contracts for the use by them of said terminal properties, or parts thereof?

A. Yes, there have.

Q. State if you know from your examination of said books or otherwise whether money so received by the terminal company from railroad companies other than the plaintiffs in this suit has been so applied or used?

A. It has been applied on the monthly bills against the complainant companies or their predecessors.

Q. Have you now before you the original records of the proceedings had at the meetings of the stockholders and directors of the Des Moines & St. Louis Railroad Company, from the date of its organization down to and including the year 1890?

A. Yes, sir.

Q. Who was Secretary of the Des Moines & St. Louis Railroad Company from the date of its organization down to and including the year 1890?

A. Mr. F. M. Hubbell.

Q. Have you ever examined that record book of the Des Moines & St. Louis Railroad Company to see whether it contains any entry or writing showing that the stockholders or directors of that Company, either by resolution or otherwise, authorized any one to attend as its agent, or proxy, a meeting of the stockholders of the Des Moines Union Railway Company, to be held at the office of said company in the city of Des Moines, on the 3rd day of January, 1890, the 18th day of February, 1890 or on any subsequent date, for the purpose of considering or voting upon any proposed amendments to or changes in the original Articles of Incorporation of the Des Moines Union Railway Company, or authorizing any one to be present as its agent or proxy, at any adjourned or subsequent meeting of said stockholders of the Des Moines Union Railway Company to consider or vote upon any proposed changes or amendments in its said Articles of Incorporation?

Objected to as irrelevant and immaterial, because the parties then beneficially interested in the Des Moines & St. Louis Railroad Company participated in said meeting, voted in favor of everything that was done there, and received and now retain the benefits of the sale to the Des Moines Union Railway Company; and for the further reason, if there had been any irregularity in the said proceedings, it was acquiesced in for nearly 20 years, if not quite 20 years, before any protest was made of any kind before this suit was brought.

A. I have examined the record book of the Des Moines & St. Louis Railroad Company. It does not contain any entry or writing showing that the stockholders or directors of the Company, either by resolution or otherwise authorized any one to attend as its agent or proxy a meeting of the stockholders of the Des Moines Union Railway Company, held on January 3, 1890, or February 18, 1890, or on any subsequent date for the purpose mentioned in your question.

Q. Mr. Pryor, it is stated in paragraph 25 of the answer in this case as follows:

"These respondents further admit that they claim and assert that the only rights of the complainants in the said Terminal property are their rights under the contracts Exhibits "P" and "R", and that upon the expiration of said contracts, the complainants will not have the right to use the said Terminal property except upon reasonable terms and conditions and

upon payment by them of a reasonable compensation for the rights which may be granted to them under contracts which may then be made with the Des Moines Union Railway Company."

Now, I will ask you when you first heard the defendants or either of them or any one else assert the claim of title in the Des Moines Union Railway Company, or the substance of such a claim of title in the terminals, as is set forth in that part of the answer I have just quoted?

A. I never heard any such claim asserted by any one until sometime in October, 1905, when the claim was made by Mr. F. M. Hubbell in Mr. Earling's office, the President of the Milwaukee & St. Paul Railroad, in Chicago.

Q. State what occurred there; I don't know what was said.

A. We were there in a meeting, discussing the disposition of these so-called "surplus Earnings", and Mr. Hubbell wouldn't concede that these amounts should be credited on the monthly bills of the complainants and their successors, and we claimed they should be. Finally Mr. Hubbell made the assertion that at the end of the present contract of May 10, 1889, that he would show us what we would have to pay then, and that we could not have the right to use the terminals except upon such terms and conditions as he might make.

Q. Meaning the Des Moines Union?

A. The Des Moines Union.

Q. That is he might make after the expiration of the—

A. May 10, 1889 contract.

Q. Mr. Pryor, it is provided in Article IV of the Articles of Incorporation of the Des Moines Union Railway Company, adopted in 1884, and attached to the bill of complaint as Exhibit "B" that

"No contract, lease or other agreement amounting to a permanent charge upon the property of the corporation shall be entered into by the Board, unless the same shall have been first approved by the Des Moines & St. Louis Railroad Company, the Des Moines Northwestern Railway Company, and the St. Louis Des Moines & Northern Railway Company, or their assigns, and shall have been submitted to a meeting of the stockholders duly called, and shall have been approved by more than $\frac{3}{4}$ of all the stockholders, and it shall not be within the power of the Board of Directors to create any limitation whatsoever upon any of the franchises of the corporation, except the same shall have been submitted to and approved by the stockholders as hereinbefore provided."

Now, I will ask you whether you have examined that record book of the Des Moines & St. Louis Railroad Company to see

whether it contains any entry or writing showing that the stockholders or directors of that company, have either by resolution or otherwise ever at any time authorized or approved the execution of any deeds, contracts, leases or other agreements by the Des Moines Union Railway Company with other parties respecting said terminal properties in the city of Des Moines, and if so, state what deeds, contracts, leases or other agreements of the Des Moines Union Railway Company with other parties are shown to have been authorized by the Des Moines & St. Louis Railroad Company?

Objected to as irrelevant and immaterial, in so far as it relates to any contracts made after April 18, 1890, because at that time this article was amended, and the portion of it quoted was eliminated from it. And it is further objected to as irrelevant and immaterial, because the successors in interest of the Des Moines & St. Louis Railroad Company and that company have acquiesced in and received the benefits of all contracts made with other railroad companies by the Des Moines Union Railway Company, and have participated in the making of said contracts.

A. Well, the original record book of the Des Moines & St. Louis Railroad Company, which I have before me shows, on page 127, that at a meeting of the Board of Directors, May 25, 1889, the Board approved the agreement between the Des Moines Union Railway Company the Des Moines & St. Louis Railroad Company, and Des Moines Northwestern Railway Company, and the St. Louis, Des Moines & Northern Railway Company of date May 10, 1889, and authorized and directed the President and Secretary of the Company to execute the same. On Page 146 of the record, it shows that the stockholders on January 3, 1890, ratified and approved the execution of the mortgage to the Central Trust Company by the Des Moines Union Railway Company. On page 158 the record shows, that on January 15, 1897, the Board of Directors of the Des Moines & St. Louis Railroad Company passed a resolution assenting to and approving of the contract between the Des Moines Union Railway Company and the Chicago Great Western Railroad Company, dated July 2, 1896. Page 165 shows that on February 8, 1897, the Board of Directors voted that the President of the Company be and is hereby authorized to execute the new agreement between the Des Moines Union Railway Company and the tenant or proprietary companies, substantially upon the terms and conditions of the one now in existence with the approval of the same by Col. Wells H. Blodgett, counsel for the Wabash Railroad Company. This ratification of the contract of May 10, 1889, is shown in Exhibit "R" attached to the bill of Complainant.

I do not find any record of any other contracts or leases than mentioned.

Q. Mr. Pryor, did the Wabash, St. Louis & Pacific Railway Company ever operate the Des Moines & St. Louis Railroad, extending from Albia to and into the City of Des Moines?

A. Yes, sir.

Q. Do you remember about the time when the Wabash, St. Louis & Pacific ceased to operate it? A. May 29, 1884.

Q. Did the Wabash, St. Louis & Pacific Railway Company, while operating the Des Moines & St. Louis line use in connection with that road any terminals in the city of Des Moines, and if so, state what terminals it so used?

A. It used the same terminals; these same terminals covered by the contract of May 10, 1889, or those that were in existence at that time.

Q. During the time that the Wabash, St. Louis & Pacific Railway Company operated the Des Moines & St. Louis railroad, did it use any terminals in Des Moines other than those you have mentioned as belonging to the Des Moines Union Railway Company? A. It did not—

Q. I will change that question before you answer it: I will say, commonly known as the terminals of the Des Moines Union Railway Company? A. It did not.

Q. Who, or what company or corporation succeeded the Wabash, St. Louis & Pacific Railway Company in the operation and management of the Des Moines & St. Louis Railroad?

A. The Purchasing Committee of the Wabash St. Louis & Pacific.

Q. Do you remember who they were, the names of the parties composing that Committee?

A. Yes, sir. James F. How, Thomas H. Hubbard, Oshen B. Ashley and Edgar T. Wells.

Q. Did the Wabash Purchasing Committee in operating the Des Moines & St. Louis Railroad use in connection with that line any terminals in the city of Des Moines, if so, please state, if you know, what terminals the committee so used?

A. It did. It used the terminals known as the Des Moines Union Terminals.

Q. What company or corporation succeeded the Wabash Purchasing Committee in the operation and management?

A. The Wabash Western Railway Company.

Q. Did the Wabash Western Railroad Company in operating the Des Moines & St. Louis Railroad, extending from Albia to Des Moines, use any terminals in the city of Des Moines in connection with that line; if so, state what terminals it so used, if you know?

A. It did. It used the same terminals known as the Des Moines Union terminals.

Q. What company or corporation succeeded the Wabash Western Railroad Company in the operation or management of the Des Moines & St. Louis Railroad?

A. The Wabash Railroad Company.

Q. Has the Wabash Railroad Company in operating the Des Moines & St. Louis Railroad, extending from Des Moines to Albia, used any terminals in the city of Des Moines in connection with that line of road; if so, state what terminals in the city of Des Moines the Wabash Railroad Company has so used?

A. The same terminals, known as the Des Moines Union Terminals.

Q. Mr. Pryor, it is stated in paragraph 23 of the defendants' answer in this case:

"These respondents further respectfully show to the Court, that ever since the execution of said exhibits "P" and "R" the complainants and their predecessors in interest have accepted the said contracts as binding and in full force and effect in all respects, and have made payments for the use of the terminals and facilities furnished to them by reason of said contracts";

Now, will you look at exhibit "P" attached to the bill of complaint in this case, and state whether it is the contract entered into May 10, 1889, between the Des Moines Union Railway Company, the Des Moines & St. Louis Railroad Company, the St. Louis, Des Moines & Northern Railway Company, and the Des Moines Northwestern railway company? A. It is.

Q. Will you look at exhibit "R" to the Bill of Complaint, and state whether it is what is called the ratification contract, executed on or about July 31, 1897, between the Des Moines Union Railway Company, the Wabash Railroad Company and the Des Moines Northern & Western Railroad Company?

A. It is.

Q. Now, I will ask you whether those two contracts are the only one that have been executed, to your knowledge, between the Des Moines Union Railway Company and the Complainants and their predecessors in interest, respecting the use and operation of said terminals in the city of Des Moines?

A. They are.

Q. You have been familiar with the accounts that have been rendered from time to time by the Des Moines Union Railway Company, against the Wabash Railroad and its predecessors, have you? A. Yes, sir.

Q. Now, in so far as you know, have all the bills and accounts between the parties to this contract (exhibits "P" and "R") been made by the Terminal Company and paid by the

complainants or their predecessors in accordance with these agreements? A. They have.

Q. Mr. Pryor, you have referred to a resolution that was adopted by the Directors of the Des Moines Union Railway Company, December 11, 1891 respecting the "Surplus Earnings" did you not? A. Yes, sir.

Q. And will you read it?

A. "Whereas, this Company is in need of a cash capital with which to purchase supplies and pay current bills which come in before it receives its monthly revenues from the tenant companies;

Therefore, Be It Resolved, that until the further action of the Board, the sums received as rents of real estate and of switching charges, shall not be credited upon the accounts of the tenant companies, but shall be used for the aforesaid purpose."

Q. Were those surplus earnings credited upon the monthly bills of the Railroad Companies, parties to the agreement of 1889, up to that date?

A. They had been up to the 1st of December, 1891.

Q. Now, did you ever as a member of the Board of Directors of the Des Moines Union Railway Company, offer any resolution or vote for any resolution, or co-operate with any one representing either of the complainants in this suit, in an effort to have the so-called "Surplus Earnings" again credited on the bills of the railroad companies, complainants in this suit?

A. I never attended any meeting of the Board of Directors of the Des Moines Union Railway Company, without bringing up this subject of crediting the revenues derived for switching and rental of houses, etc., on the monthly bills, and at the Board meetings insisted on this being done.

The record of the minutes of the meeting of the Board of directors held March 12, 1906, which I have before me, of the Des Moines Union Railway Company, shows that a notice and demand was read to the directors.

Mr. Guernsey: I think we want to object to this part of it as not the best evidence.

A. (Cont'd) The minutes of the meeting of the Board of Directors of the Des Moines Union Railway Company, held March 12, 1906, and which I have before me state: That Mr. Charles E. Vroman, Assistant General Solicitor, on behalf of the Chicago, Milwaukee & St. Paul Railway Company, then read a notice and demand of which the following is a copy, to-wit:

"To the Des Moines Union Railway Company, its Officers and Board of Directors:

The repeated requests heretofore made upon you for the distribution and crediting to the tenant companies of the receipts from real estate rentals, switching charges, etc., having been ignored, the Chicago, Milwaukee & St. Paul Railroad Company formally demands that you and each of you, without further delay cause all moneys arising from rents of real estate, switching charges, etc., heretofore and hereafter collected to be credited on the bills against this company on the basis of its proportion to the total wheelage.

(Signed) CHICAGO, MILWAUKEE & ST. PAUL
RAILROAD COMPANY.

By Charles E. Vroman, Assistant General Solicitor.

And the same was received and ordered placed on file."

Thereupon Mr. C. M. Travons, General Solicitor for the Wabash Railroad Company, read and notice and demand of which the following is a copy, to-wit:

"To the Des Moines Union Railway Company, its Officers and Board of Directors:

The repeated requests heretofore made upon you for the distribution and crediting to the tenant companies of the receipts from real estate rentals, switching charges, etc., having been ignored, the Wabash Railroad Company hereby formally demands that you and each of you, without further delay cause all moneys arising from rents of real estate, switching charges, etc., heretofore and hereafter collected to be credited on the bills against this Company on the basis of its proportion to the total wheelage.

(Signed) WABASH RAILROAD COMPANY.

By C. M. Travons, General Solicitor.

And the same was received and ordered placed on file.

Mr. Pryor offered the following preamble to the resolution, which was seconded by Mr. McKenna:

Whereas, it appears from the books of this company that expenditures aggregating a large amount have been made for additional property and improvements, other than supplies and current expenses;

And, Whereas, said expenses have been temporarily made from moneys derived from real estate rentals, switching charges, etc., to which the tenant companies are entitled on the basis of their respective wheelage;

And, Whereas, the cost of said property and improvements is properly chargeable to the monthly account;

Therefore, be it Resolved, that the Trustees in the mortgage heretofore executed by this Company be requested to certify and issue the remaining unissued bonds of this Company secured by said mortgage in accordance with section 27 of the contract of this Company and the tenant companies, of date, May 10, 1889, and that the same be applied towards re-im-bursing the tenant companies. Resolved further, that the President and other officers are hereby instructed to do and perform all things necessary and proper to carry out this resolution.

Mr. Pryor offered the following resolution, seconded by Mr. McKenna, to-wit:

Whereas, the distribution and crediting to the tenant companies all rents collected for the use of real estate and charges for switching was discontinued in accordance with the following resolution adopted by the Board of Directors of this Company on the 7th day of January, 1892, to-wit:

Whereas, this Company is in need of a cash capital with which to purchase supplies and pay current bills which come in before it receives its monthly revenues, from the tenant companies;

Therefore, be it Resolved, that until the further action of the Board, the sums received as rents of real estate and of switching charges, shall not be credited upon the accounts of the tenant companies, but shall be used for the aforesaid purpose.

And, Whereas, the moneys collected from the aforesaid sources now exceed the amount necessary for the cash or working capital contemplated in said resolution;

Therefore be it Resolved, that all moneys now on hand or hereafter received as rents of real estate and switching charges, over and above what may be required to maintain a cash working capital of \$25,000.00, to purchase supplies and pay current bills pending receipt of the monthly revenues from the tenant companies, be credited upon the bills of the different tenant companies, as per order of the Board passed February 11, 1891, and giving to each company its share ascertained by wheelage.

Mr. McKenna then offered the following resolution:

Resolved that the demands this day made by the Chicago, Milwaukee & St. Paul Railway Company, and the Wabash

Railroad Company, with respect to the payment and the crediting of the rentals from real estate and charges for switching be complied with, and the officers of this Company are hereby directed to make such payments and credits."

The minutes of the meeting of the Board of Directors of the Des Moines Union Railway Company, which I have before me, of January 18, 1907, show that I offered the following protest:

"The Chicago, Milwaukee & St. Paul Railway Company and the Wabash Railroad Company hereby again enter formal protest against the action of the officers of the Company, in making charges of payments of any kind against or from the so-called "Surplus Earnings" and request that this protest be entered upon the records of this meeting."

The minutes of the meeting of the Board of Directors of the Des Moines Union Railway Company, held January 3, 1908, read:

"The following protest was read to the meeting and filed:

Des Moines, Iowa, January 3, 1908.

As the representatives of the Chicago, Milwaukee & St. Paul Railway Company, and the Wabash Railroad Company, and also as Directors in the Des Moines Union Railway Company Board of Directors, we again make formal protest against the practice of charging expenditures of any description against the so-called surplus earnings account, it being claimed by us at all times that the revenues accruing from rentals and switching earnings, etc., should be applied monthly to the reduction of the expenses of the Des Moines Union Railway Company, and the balance of the expenses be collected from the companies, we further protest against that part of the superintendent's report just submitted in which he states that a part of the earnings for 1907 had been appropriated to the payment of two switching engines, \$23,050.00; two shares of capital stock of the Iowa Transfer Railway Company, \$200.00; and a siding to the Iowa Glue Company, \$824.08—total, \$24,074.08. We do not protest against these improvements, but against the application of earnings towards the payment thereof.

(Signed) WABASH RAILROAD COMPANY,

By E. B. Pryor, Vice-President.

CHICAGO, MILWAUKEE & ST. PAUL
RAILWAY COMPANY,

By E. W. McKenna, Second Vice-President.

E. W. McKenna, E. B. Pryor and Charles E.
Vroman, Directors."

Q. I will ask you whether the records show whether these several motions and resolutions you have enumerated were adopted, or whether any of them were adopted?

A. The records show none of them were adopted. The record shows that the resolutions that were offered at the meeting of March 12, 1906, were voted in favor of by Messrs. Pryor, McKenna and Underwood. And the following directors voted against the adoption: F. M. Hubbell, F. C. Hubbell, G. C. Hubbell, H. D. Thompson and C. Huttenlocher; that being the vote on each of the resolutions.

At the meeting of January 18, 1907, the vote in favor was Messrs. McKenna, Pryor and Vroman. Those voting against, Messrs. F. C. Hubbell, F. M. Hubbell, G. D. Thompson, C. Huttenlocher and G. C. Hubbell.

At the meeting of January 3, 1908, there was only a protest at that meeting. There was a resolution offered at the meeting of January 18, 1907.

Mr. Guernsey: On that protest of 1908, what if anything was done; any action taken on it at all?

A. It was simply filed.

At the meeting of January 18, 1907, there was a resolution offered that the amount to be paid for the new switch locomotives when paid be carried on the books of this Company in suspense. Upon this resolution Messrs. McKenna, Pryor and Vroman voted aye. F. C. Hubbell, F. M. Hubbell, H. D. Thompson, G. C. Hubbell and C. Huttenlocher voted no.

At the same meeting a resolution was offered by Mr. Pryor that the amount paid for the two shares of capital stock of the Iowa Transfer Company be carried on the books of the Company in suspense. Messrs. McKenna, Pryor and Vroman voted aye. Messrs. F. M. Hubbell, F. C. Hubbell, H. D. Thompson, G. C. Hubbell and C. Huttenlocher voted no.

Q. Mr. Pryor, how much money had been expended by the Wabash St. Louis & Pacific Railroad Company, the Des Moines & St. Louis Railroad Company, and their successors, in Des Moines, for terminal purposes, prior to May 1st, 1888?

A. \$312,977.75.

Q. What was the total sum that had been expended up to the date mentioned by the Wabash, the Des Moines & St. Louis, the St. Louis Des Moines & Northern and the Des Moines & Northwestern Companies in the purchase of terminals in Des Moines? A. \$370,200.91.

Q. Did you have any correspondence with any official of the Des Moines Union Railway Company respecting the non-distribution of the surplus earnings among the railroad companies on their monthly bills? A. I did.

Q. State what correspondence you had.

A. When I discovered no credits were made on the monthly bills for the month of December, 1891, I wrote to Mr. Horace Seeley, who was the Superintendent of the Des Moines Union Railway Company and had charge of the management of the property, asking why the credit had not been made on the monthly bill for December for the switching earnings and rentals, etc., and I have before me his original letter in answer to that inquiry, it is as follows:

"March 2, 1892.

D. B. Howard, Auditor Wabash Railway,
St. Louis, Mo.

Dear Sir:

Replying to yours of the 1st inst., in regard to the allowance for switching, rentals, etc., that should be made on our bills for the months of December and January, I have to say, that at a meeting of the Executive Committee, held January 7, 1892, it was decided not to distribute these collections for a period of time, until the Des Moines Union Railway Company could accumulate a small fund for working capital. I presume this will continue in effect until January, 1893. You will be furnished each month a statement showing the amount of this rental, and your proportion of the same, so you can make a charge against the D. M. U. Railway and carry it on your books, as you see fit for future adjustment.

Yours truly,

HORACE SEELEY, Superintendent."

That is written on the letterhead of the Des Moines Union Railway Company, General Offices.

G. M. Dodge, President
F. M. Hubbell, Secy-Treas
Horace Seeley, Supt.

Dated, Des Moines, Iowa, March 2, 1892.

Mr. Guernsey: This letter is objected to and the defendants move to strike it out, so far as it is intended to vary or modify the contract between the parties, because the Superintendent had no authority to make or change this contract, and it is also objected to in so far as it attempts to construe what he calls the resolution of the executive committee, which was in fact a resolution of the Board of Directors, as incompetent.

By Agreement of the parties, at this time, 12 M. an adjournment was taken until 1:30 P. M. of this day.

Afternoon Session.

Jan., 26, 1911.

Now, at this time, pursuant to the adjournment, the further taking of testimony on the part of Complainants is resumed as follows:

EDWARD B. PRYOR, recalled for further direct examination. Examined by Mr. J. L. Minnis, and testified as follows:

Q. Mr. Pryor, you were asked whether all bills and accounts between the parties to the contracts, exhibits "P" and "R" were made by the Terminal Company and were paid by the complainants and their predecessors in accordance with these contracts, and you answered yes. Now, I will ask you whether you wish to modify that answer?

A. My answer is, that all bills and accounts between the parties to these contracts have been made by the Terminal Company and paid by the complainants and their predecessors in accordance with the agreements, with the exception of their failure to credit the switching earnings and rentals which we have claimed should be credited under the contract, and which Mr. Hubbell claimed should not be.

Q. Mr. Pryor, who managed and operated the terminal properties now managed and operated by the Des Moines Union Terminal Railway Company, after the execution of the contract of January 2, 1882, and prior to the execution of the contract of May 10, 1889?

A. The Des Moines & St. Louis Railroad Company had the management of the terminal property under the contract of January 2, 1882, and operated it under that agreement for the parties to the contract up to May 1, 1888, and that was the date upon which the Des Moines Union Railway Company assumed the management of the property.

The defendants move to strike from the answer, the statement that the Des Moines & St. Louis was in control under the contract of 1882, and the statement that it operated under the contract, as conclusions of the witness and incompetent.

A. (Cont'd) And after the 1st of May, 1888, the Des Moines Union Railway Company had the management of the property up to the date of the agreement of May 10, 1889, and it was operated under the terms of the agreement of January 2, 1882.

Defendants move to strike from the answer "and it was operated" and what follows, as a conclusion and incompetent on that account.

Q. Who paid the disbursements of the Des Moines & St. Louis Railroad Company during the period it managed the terminal property; that is, the disbursements in connection with the operation and maintaining of the property?

A. The Wabash, St. Louis & Pacific—I didn't catch the intent of your question.

(Question and answer withdrawn.)

Q. How were the expenses and disbursements made in connection with the maintenance and operation of the terminal property, paid during the period the Des Moines & St. Louis Railroad Company managed the terminal properties?

The defendants object to all of this prior to the organization of the Des Moines Union Railway Company, as irrelevant and immaterial for any purpose, so far as it is concerned.

A. They were paid by the railroads party to the agreement of January 2, 1882, namely, The Des Moines & St. Louis Railway Company, the Des Moines Northwestern Railway Company, and the St. Louis, Des Moines & Northern Railway Company on wheelage basis.

Q. Who paid the expenses and disbursements made by the Des Moines Union Railway Company in connection with the maintenance and operation of the terminal properties during the period beginning with its organization and ending with the execution of the contract of May 10, 1889?

Objected to as irrelevant and immaterial and calling for a conclusion.

A. The same companies, namely, the Des Moines & St. Louis, Des Moines Northwestern, and St. Louis, Des Moines & Northern Railway. That is to say, from the 1st of May, 1888, when the Des Moines Union took charge of the property, up to the date of the contract of May 10, 1889.

Q. During the period between the execution of the contract of January 2, 1882, and the execution of the contract of May 10, 1889, who paid for the equipment purchased by the Des Moines Union Railway Company for use on the Des Moines Terminals?

A. The first equipment that was purchased by the Des Moines Union Railway Company, were engines purchased in the latter part of 1888, and the payments for those engines extended over a period, commencing in the latter part of 1888, over into 1889; so that those payments were over the two different periods covered by your question, both prior to and after the 10th of May, 1889; but the payments were made by the Des Moines & St. Louis, Des Moines Northwestern, St. Louis,

Des Moines & Northern on a wheelage basis during both those periods, both before and after May 10, 1889.

Q. By the complainants and their predecessors?

A. Yes, sir.

Q. Mr. Pryor, you were asked whether you had examined the record book of the Des Moines & St. Louis Railroad Company, from the date of its organization, down to and including the year 1890, to ascertain whether it contained any entry or writing, showing that the stockholders or directors of that Company, either by resolution or otherwise, had authorized any one to attend as its agent, or proxy, the meeting of the stockholders of the Des Moines Union Railway Company, to be held at the office of said Company in the city of Des Moines, on the 3rd day of January, 1890, on the 18th day of February, 1890, or on any subsequent date, for the purpose of considering or voting upon any proposed amendment to or changes in the original Articles of Incorporation of the Des Moines Union Railway Company, or authorizing any one to be present, as its agent, or proxy, at any adjourned or subsequent meeting of said stockholders of said Des Moines Union Railway Company, to consider and vote upon any proposed changes in or amendment to its said articles of incorporation, and you answered, that said record does not show that any one was authorized, either as agent or proxy, to attend any of said meetings for said purpose. Now, I will ask you if you have examined the stock book of the Des Moines Union Railway Company, with respect to when the certificates of shares of stock in that company were first issued.

A. I have.

Q. Were any of the certificates of shares of stock of the Des Moines Union Railway Company issued on January 3, 1890, or February 18, 1890, or prior to April 8, 1890?

A. No, sir. The stock certificate books show there were no certificates of stock issued prior to April 8, 1890.

Q. When do the stock books show that certificates of shares were first issued? A. On the 8th day of April, 1890.

Cross-Examination

By N. T. Guernsey, Esq.:

Q. When was the first time you came to Des Moines, Mr. Pryor?

A. In connection with looking into the affairs of the Company, you mean? A. Yes.

A. I don't remember exactly the first time I came. I think that the first time I attended a meeting of the Board of Directors of the Company, was in 1901.

Q. When was the first time you came to Des Moines, either with reference to this Company, or any other matter?

A. I don't remember.

Q. Did you come to Des Moines as early as 1888?

A. No, sir.

Q. As early as 1890? A. No, sir.

Q. As early as 1895?

A. I think I did in 1895, but I am not positive about that.

Q. The first time you came up here was about August 26, 1896, wasn't it, and in this connection I will show you a letter, to refresh your recollection, which I will ask the reporter to insert in the record, as follows:

"The Wabash Railroad Company,
Office

J. Ramsey, Jr., Vice-President & Gen'l
Manager.

St. Louis, Mo.

Aug. 26th 96.

Mr. F. C. Hubbell,

Pres't. D. M. U. Ry. Co.,

Dear Sir:

This will be handed you by Mr. Pryor, our Assistant Auditor, whom I have requested, in company with Mr. Garrett, to go to Des Moines, and look over the methods and cost of operating the joint terminals.

I do not do this because I have any doubts or apprehensions as to the property being handled in the best way possible for the interests of all, but only in order to fully post myself on the whole situation at that point.

I find our company has not been in the habit of receiving any statement from the Des Moines Union, other than the one showing the cost of operation, and we have no information, whatever, as to the revenues of the Company, their general disposition, etc., nor any of the detailed information which I think we should have in order to keep properly informed.

Will you kindly have the officers of the Des Moines Union furnish Messrs. Pryor and Garrett every opportunity necessary for them to become properly posted in the premises.

Yours truly,

J. RAMSEY, Jr.
Vice-Pres't & Gen'l Manager.

A. Yes, August 26, 1896.

Q. Is that the first time you came up here?

A. I think it is.

Q. So that you have no personal knowledge as to the matters which transpired in Des Moines prior to August 26, 1896, as to which you testified?

A. With the exception of the handling of the bills and vouchers between the companies interested, and the Wabash Railroad Company, I was perfectly familiar with all the manner in which the bills were rendered and vouchered and paid.

Q. That I don't think answered my question; what I asked you was, whether you had any personal knowledge with reference to the matters as to which you testified, which transpired in the City of Des Moines prior to August 26, 1896?

A. My answer was, only through being perfectly familiar with the bills as rendered and paid.

Q. Do you claim that you had personal knowledge of the matters which transpired here in Des Moines prior to your first trip to Des Moines, which was on August 26, 1896?

A. Only as shown by the bills and vouchers.

Q. And that is your idea of personal knowledge?

A. It is.

Q. Now then, you stated that the Des Moines and St. Louis Railroad operated the Des Moines Union during some period, didn't you?

A. I said it operated the terminals during some period.

Q. What period was that?

A. I don't recall without looking back at the records, but I think it was from the time of the inception of the terminals up to the time they were turned over to the Des Moines Union Company, May 1, 1888.

Q. What employe of the Des Moines & St. Louis Railroad was in active charge of those terminals at that time?

A. I don't recall.

Q. At that time was the Des Moines & St. Louis Railroad Company operating its own railroad?

A. No, sir.

Q. Did it have any employes of any kind?

A. It had officers, including Mr. F. M. Hubbell, Secretary.

Q. I didn't ask you that; did it have any employes?

A. I don't know.

Q. Did it keep any books of account?

A. I don't know. I think all the books of account were kept by the Wabash, St. Louis & Pacific Railway Company.

Q. Did the Des Moines & St. Louis Railroad Company ever have any employe to whom it paid a salary?

A. I don't know.

Q. Did it keep any books of account which showed the expense of operating this terminal?

A. I don't know. I think not.

Q. Then what do you mean when you say that it operated it?

A. I mean that it was operated in its name.

Q. Well, but what did the Des Moines & St. Louis Railroad Company or any officer or employe of that company do in connection with the operation of this terminal during the period you refer to, so far as your own knowledge goes?

A. I don't know.

Q. You don't know anything about it, do you?

A. No.

Q. Now, as a matter of fact, who owned the stock of the Des Moines St. Louis Railroad Company?

A. I don't know.

Q. Don't the record of the Des Moines, St. Louis Railroad Company show who subscribed for that stock and who voted that stock? A. Voted which stock?

Q. The stock of the Des Moines & St. Louis Railroad Company?

A. I don't know. I haven't examined the record in that connection.

Q. Could you examine the entire record so as to testify it doesn't show certain things without examining all of it, of the Des Moines St. Louis Railroad Company?

A. Certainly, I could.

Q. Now, in connection with the examination of this record, did you notice a provision in the contract that is set out in the meeting of December 5, 1880, headed:

Meeting for the Purpose of Organizing the Des Moines & St. Louis Railroad Company between Jefferson S. Polk, James S. Clarkson, Frederick M. Hubbell and John S. Runnells, and the Wabash St. Louis & Pacific Railway Company, party of the second part, in which it is stated that the first parties, that is the individuals named, will subscribe to the capital stock of said Company such amount as will be necessary to qualify themselves as directors thereof and no more, and will receive no other subscription to the capital stock of said Company except the following: they will accept a subscription to the capital stock of said company to be made by such person or persons as shall be designated by the second party hereto amounting to the entire capital stock of the company except that which shall have been subscribed by themselves, as above. Do you remember that?

A. I did not read that part of the record in connection with looking for the action of the Board of the Des Moines & St. Louis authorizing any agent or proxy to attend the meeting of January 3, 1890, or thereafter.

Q. Have you ever read the part of this record I just referred to?

A. I may have at some previous time.

Q. You know, as a matter of fact, that the Wabash, St. Louis & Pacific Railway Company subscribed for all the stock of this Des Moines & St. Louis Railroad Company?

A. No, I do not know. I know it was among its assets of the stock. I presume, of course, the record shows that action.

Q. Weren't you familiar with all of those accounts at that time, and didn't you know who was subscribing for this stock and who was paying this money?

A. No; that wasn't necessarily a part of my duties at that time, in 1880.

Q. What were your duties in 1880?

A. I was clerk in the Auditor's office in 1880, handling bills and vouchers.

Q. Now then, you do know as a matter of fact that the Wabash, St. Louis & Pacific Railway Company subscribed for all the stock to build the Des Moines & St. Louis Railroad Company and took the bonds that were issued, and then took the property over on a perpetual lease and operated it?

A. The record will show that, I presume.

Q. I am asking you what you know about it?

A. I think that is true.

Q. You do know as a matter of fact that the Des Moines & St. Louis Railroad Company never operated anything, don't you? A. I presume that is true.

Q. Now then, what part of this record did you examine in order to ascertain whether or not there was any authority for anybody to represent the Des Moines & St. Louis Railroad Company at the meetings of the Des Moines Union Railway Company, held in January and February, 1890 and thereafter?

A. I examined the record book commencing with the meeting of the stockholders on January 1, 1885, and from that on through.

Q. You referred to the Purchasing Committee as operating this road some time; during what period did the Purchasing Committee operate this Des Moines & St. Louis Railroad?

A. It operated the same way the Des Moines & St. Louis Railway Company did—

Q. I asked you what period that was.

A. From May 29, 1884, the date of the Receivership of the Wabash, St. Louis & Pacific Railway Company.

Q. Did the Purchasing Committee take it on the day the receivers were appointed?

A. The property never passed under the hands of the receivers.

Q. When was the Purchasing Committee organized?

A. I don't recall.

Q. Was it before or after the receivers were appointed?

A. After the receivers were appointed.

Q. It didn't take over the property before it was organized?

A. No.

Q. Now, I notice here in the record of the meeting of the stockholders of the Des Moines & St. Louis Railroad Company, of January 3, 1890, that the stock present was this: F. M. Hubbell, representing 1 share; J. S. Polk, representing 1 share; C. M. Hayes, representing 1 share; James F. How, representing 1 share; the Purchasing Committee of the Wabash, St. Louis & Pacific Railway Company, represented by James F. How, shares: Now, I will ask you, are you familiar enough with the accounts and books of the Wabash St. Louis & Pacific Railway Company, to be able to tell us whether at this time the Purchasing Committee was the owner of the stock of the Des Moines & St. Louis Railroad Company, which had theretofore been held by the Wabash, St. Louis & Pacific Railway Company?

Objected to on the part of complainants, because the Wabash, St. Louis & Pacific Railway Company never owned that stock.

A. My recollection is that the Purchasing Committee owned that stock at that time.

Q. Now the Board of Directors elected at that time—page 146 of this record, were first, James F. How—was he a member of the Purchasing Committee? A. No, sir.

Q. What relation did he sustain to the Wabash, St. Louis & Pacific Railway Company?

A. Why, the Wabash, St. Louis & Pacific Railway Company had been foreclosed in 1890.

Q. And he sustained no relation at that time?

A. No; he was Vice-President of the Wabash Railroad Company at that time.

Q. That had been organized at that time? A. Yes, sir.

Q. What relation did Mr. How sustain to the Purchasing Committee?

A. He was the general agent for the receivers, but he sustained no relation to the Purchasing Committee that I had ever heard of.

Q. None whatever? A. No.

Q. Now, you called attention to the fact that Mr. Hubbell was Secretary right straight through, as you would observe by reading these records up to some time in 1890, of the Des Moines & St. Louis; did you read them carefully enough to notice who the other officers were? A. Yes, sir.

Q. Now, he was the President in 1890? A. Yes, sir.

Q. The Directors after Mr. How—Mr. A. B., did he sustain any relation to the Wabash Railroad Company? A. He was Assistant Attorney.

Q. Next is C. M. Hayes? A. General Manager.

Q. The next is O. D. Ashley.

A. He was President of the Wabash Railroad Company.

Q. Is he also a member of the Purchasing Committee?

A. Yes, sir.

Q. The next is W. H. Blodgett.

A. Yes, sir; General Counsel.

Q. The next one is H. S. Priest; did he sustain any relation to the Wabash then?

A. I think he was Assistant Attorney; he was an attorney for the Wabash.

Q. And the other two are J. S. Polk and F. M. Hubbell, and they weren't officers or attorneys of the Wabash, as far as you know? A. No, sir.

Q. In connection with this question of authority to vote the stock of the Des Moines & St. Louis Railroad Company at meetings of the Des Moines Union Railway Company in January 1890, and thereafter, you are familiar with the resolutions which were adopted by the Des Moines Union Railway Company on the 8th of April, 1890, are you not, Mr. Pryor?

A. Yes, sir; I read them.

Q. And you know that those resolutions recited on page 21 of the Des Moines Union Record, as follows, don't you: Whereas it was and is agreed that said property was fairly worth the sum of \$861,257.21, of which purchase price the Des Moines St. Louis Railroad Company, the Wabash, St. Louis & Pacific Railway Company, or its representative, the Purchasing Committee, the said Purchasing Committee being now the real owner of the Des Moines St. Louis Railway Company, were and are entitled to \$470,110.80 of said purchase price: Do you remember that?

A. I remember the record shows that.

Q. Then you remember the record shows further, after recitals and resolutions, among other things, as follows: (p. 23 of Des Moines Union Record) That but to complete the payment of such purchase price the President and Secretary are hereby authorized to issue certificates for 3992 shares of stock (which shares including 8 already issued on behalf of said parties, aggregate 4000 shares) as follows:

To the Purchasing Committee of the Wabash St. Louis & Pacific Railway Company 3996 shares.

You are familiar with that also?

A. I am familiar with the fact that the record shows that.

Q. You know as a matter of fact that stock was issued to the Purchasing Committee, don't you? A. Yes, sir.

Q. And you know among the persons who voted for that resolution, were Mr. J. F. How, then President of the Wabash Railroad Company, one of the complainants?

A. He was Vice President at that time. He never was President.

Q. And Mr. C. M. Hayes, General Manager of that Company? A. Yes, sir; I know the record states that.

Q. And you know also, don't you, as a matter of fact, the Purchasing Committee accounted to the Wabash Railroad Company what it received for the sale of a part of this stock?

A. Yes, I know they accounted for the sale of the bonds and stock together.

Q. And that the stock in the Des Moines Union Railway Company which the Wabash Company now holds is a part of this stock?

A. Yes, sir. I want to call attention to the fact, in your quoting from the records of the Des Moines Union Railway Company you didn't start at the beginning of that subject. You just referred to; the record shows that thereupon A. B. Cummins offered the following preamble to the resolution, to-wit: Whereas, there appears to be some inadvertance, there appears to be some uncertainty—

Mr. Guernsey: Please do not read it all, we will offer that ourselves.

Q. You began your testimony with reference to the payment for the stock of the Des Moines Union Railway Company, as I recollect it. Do you mean to say that the books of the Des Moines Union Railway Company do not show that anything was ever received by the Company on account of the stock issued by the Company? A. No money received.

Q. And your answer was intended to be limited to the payment of actual money?

A. My answer was that the books of the Company did not show any money had ever been received in the way of payment for the stock.

Q. As I said, you intended your answer to be limited to payment by actual money?

A. Yes, sir. The books of the Company show an entry was made charging the cost of the road with the amount of the outstanding bonds and stock, and there is no other entry on the books, I could find, in connection with the issue of stock.

Q. So far as the books are concerned, they show that this stock was paid up in property but not money?

A. It doesn't show anything of the kind. It shows just simply an entry made on the journal charging the cost of the road and equipment with the amount of the outstanding bonds

and total amount of capital stock; no reference to the value of property in the entry or anything else.

Q. You misunderstood my question, if you thought it referred to value. There was an entry on the journal that referred to the property which the company owned in connection with its outstanding stock and bonds?

A. Only just to the extent of the words I have just quoted.

Q. You do not pretend that it is a literal quotation?

A. I think it is, absolutely—cost of road and equipment, Dr. so much money; first mortgage bonds, so much money; capital stock \$400,000.00, with no explanation in the entry whatever.

Q. What book did you find that entry in?

A. I found that in the first Journal of the Des Moines Union Railway Company.

Q. Do you know where those books are? A. Yes, sir.

Q. Where?

A. In Mr. F. C. Huddell's office; I saw them this morning.

Mr. Guernsey: We have not been able to find them; we are much obliged to you.

Q. Will you point out this entry to us so we can get it from the book? A. Yes, sir.

Q. You testified, I believe, that these books did not show any payment to Dodge, for instance, for real estate?

A. Payment in money, I said; yes.

Q. Now, you knew when you gave that answer, didn't you, Mr. Pryor, that the books of the Wabash St. Louis & Pacific Railway Company show that prior to the time that this property was conveyed to the Des Moines Union Railway Company, the Wabash had reimbursed Dodge for what he had put into it, and had become the owner of whatever interest he had there? A. It is my recollection that the books show—

Q. I didn't ask you that. I wish you would read the question to the witness.

(Question read to the witness)

Q. Didn't you know that at that time?

A. No; I don't remember that now.

Q. And when you stated that the books didn't show that they had paid Mr. How anything, you knew that the money to buy the property that stood in How's name had been advanced by the Wabash, and that the bonds and stock had been issued to the Wabash to reimburse them for this expenditure, didn't you, or cover this expenditure?

A. The Wabash was reimbursed by the money expended in the way of issue of bonds.

Q. You knew, that as between How and the Wabash, How was not entitled to any part of that consideration?

A. I have just testified to that exactly in response to the question asked as to whether the books of the Des Moines Union Railway Company showed the payment of any money to those parties.

Defendants move to strike the answer as not responsive.

(Question repeated)

A. I do not exactly get that.

Q. Didn't you know that as between How and the Wabash, when this property was transferred to the Des Moines Union, How was entitled to none of the consideration which the Des Moines Union gave for the property?

A. I knew, individually Mr. How had never paid anything for the property.

Q. Now then, you referred to this contract of May 10, 1889, between the Des Moines Union, the Des Moines & St. Louis Railroad, the Des Moines Northwestern Railway Company and the St. Louis, Des Moines & Northern Railway Company, which is exhibit "P" to the Bill several times; you are familiar with the terms of this contract? A. Yes, sir.

Q. The contract provides in the sixth section, "the party of the first part," that is the Des Moines Union Railway Company, "in consideration of the payments to be made to it by said parties of the second part, hereby grants to said parties the use of its terminal properties aforesaid", and then the first party agrees to maintain them, and so on. Now these payments were to be made up by ascertaining first the amount of interest on the bonds, and then by taking the expenses of maintenance and repairing the property, then the taxes, general and special, and insurance, and then all other costs and expenses growing out of the operation of the property, and deducting from them, using the language of the contract, "the amount, if any, which other railway companies may be under obligation to pay by virtue of the contracts for the use of said property, or parts thereof for the preceding month". And after that deduction was made, the remainder was divided between these tenant companies in proportion on the wheelage?

A. Yes, sir.

Q. Now, after that division was made, the bills were made out against the tenant companies for these payments?

A. Yes.

Q. And the tenant companies paid them? A. Yes.

Q. Now then, I wish you would state, what, if any payments, so far as you know, the Wabash Railroad Company, or the Des Moines & St. Louis Railroad Company made after

the date of this contract, to the Des Moines Union, except in payment of bills rendered, as I have just stated?

A. It paid all the bills that were rendered.

Q. What bills were rendered, except bills rendered, as I have stated for the construction called for by this contract exhibit "P" to the complainants bill of complaint?

A. I don't exactly catch your meaning; do you mean, were any other bills made?

Q. Yes.

A. No other bills were made by the Des Moines Union except under this contract.

Q. Then all of the payments that you have testified to that were made by the Wabash Railroad Company or its predecessors in interest, since the date of this contract, were in payment of bills rendered under this contract, such as I have called your attention to? A. Yes, sir.

Q. And what you meant then, when you said that it had paid interest on the bonds was, that it had paid an amount ascertained under this contract, and that in ascertaining the amount the interest on the bonds was to be taken into account as provided for in this contract? A. Yes, sir.

Q. What you meant by saying it had paid the expenses, following it down item after item here, on account of maintaining and repairing the property of the Des Moines Union Railway Company, is that its expenses of maintenance and repairing had been taken into account in making up these bills, as prescribed in this contract? A. Yes, sir.

Q. And the same thing is true with reference to tracks and depots, round houses, engine houses, taxes, general and special, and everything else that you mentioned?

A. Yes, sir; the only difference being, we claimed on these monthly bills, they were incorrect to this extent, they did not show any credit for the switching earnings which we claimed they should show. I think that will be conceded that is the point of difference between us all the time.

Mr. Guernsey: I have understood there was a controversy about that, Mr. Pryor.

Q. Now then you talk about payment by the Chicago, Milwaukee & St. Paul Railway Company and its predecessors in interest. Did that company or its predecessors in interest make any payments, so far as you know, except in payment of bills rendered under this contract of May 10, 1889?

A. None that I know of.

Q. Now, referring to this what you added to your last answer, section 4 in connection with deductions says, that after this monthly aggregate has been ascertained "there shall be deducted therefrom the amount, if any, which other railroad

companies may be under obligation to pay by virtue of contracts for the use of said property or parts thereof for the preceding month"—I think I read all that relates to deduction—that is the disputed provision in the contract?

A. I think it is; yes, sir.

Q. It is under that you claim that rentals from houses rented to various people and earnings from switching to the various industries, and things like that, should be deducted?

A. Not that alone, but the practice that these credits had been allowed from the inception of the operation of the terminals, and also by the Des Moines Union from the time it took the management of the property, up to the passage of this resolution on January 7, 1892; that is part of our contention.

Q. I will put it in a different way: this is the only provision in the contract made May 10, 1889, or any subsequent contract, upon which you rely as supporting your claim that after this contract was made you were entitled to these deductions?

A. I think it is the only clause in the contract—

Complainants object to the last question and answer, because it calls for and gives merely a construction of the witness as to the part of the contract under which our claim is made.

Q. Now, Mr. Pryor, I notice that reference was made on your direct examination, to the complainants as the proprietary companies. Now, I notice that in the resolution adopted February 11, 1891, which is set out on page 61 of the printed bill, which first ordered the application of surplus earnings on the bills of the complainants, that these companies are referred to as the tenant companies. I notice also in the resolution adopted January 7, 1892, which is set out on the same page of the bill, they are referred to as the tenant companies, and that in the protest made by Mr. Vroman, that you have referred to in the meeting of March 12, 1906, these companies are referred to as the tenant companies, and that in the protest made by you at the same meeting these companies are referred to as the tenant companies. Now, so far as you know, is there any place in this record where prior to the bringing of this suit they are referred to as proprietary companies? A. No, sir.

Q. I understood you to say on direct examination, with reference to surplus earnings since December 1, 1891, that they had been held by the Des Moines Union Railway Company, but that the Company had had charged against them the costs of some betterments and additions to the plant and equipment. What did you mean by the use of the word "held"; do you mean the Company has the money or spent it?

A. It still has the most of the money.

Q. Has it the money that is represented by these charges?

A. No, that has been spent and the expenditure charged against it.

Q. And so far as that money has been used, it has been used in additions to the property and plant and equipment of the Des Moines Union Railway Company?

A. Yes, sir.

Q. You referred to other railroads who are using the terminals, aside from the Wabash, Chicago, Milwaukee & St. Paul Railroad Companies. The Wabash, and the Chicago, Milwaukee & St. Paul Railroad Company, are the only present users of the terminals who are successors to the original parties of the second part to the contract of May 10, 1889?

A. Yes, sir.

Q. Now, the other railroads which are now using the terminals, or parts of them, are the Chicago, Great Western, the Chicago, Burlington & Quincy, the Minneapolis & St. Louis Railroad Company, and the St. Paul & Des Moines Railroad Company? A. Yes, sir.

Q. The amounts which these companies are under obligation to pay by virtue of their contracts for the use of the property for the preceding month, using the language of the contract, "are deducted from the bills rendered to your Company and the Chicago, Milwaukee & St. Paul Railway Company? A. They are.

Q. And among other amounts, since 1897, the Chicago Great Western Railroad Company, and its predecessor, the Chicago Western Railway Company, has been paying one-third of all the taxes as a part of the rent which it pays?

A. Yes, sir.

Q. And has been paying an amount equal to one-third of the maintenance as a part of the rent which it pays?

A. Yes, sir.

Q. It also pays other amounts that are specifically set out in its contract, in addition to the what I have referred to?

A. Yes, sir.

Q. Now, with reference to this resolution which you offered, you state that the vote in favor of the resolution, in 1906, I believe, giving this additional credit on the bills, was the vote of yourself, Mr. McKenna and Mr. Underwood?

A. Yes.

Q. And in that instance and in each other instance, the votes cast in favor of these resolutions were cast by one representative of the Wabash Company and two of the Milwaukee Company?

A. They were cast by three directors of the Des Moines Union Railway Company, Pryor, McKenna and Underwood. We were voting as directors of the Des Moines Union Railway Company.

Q. And at that time what relation did you sustain to the Wabash Railroad Company? A. Vice-President.

Q. What relation did Mr. McKenna sustain to the Chicago, Milwaukee & St. Paul?

A. Second Vice-President.

Q. What relation did Mr. Underwood sustain to the Chicago, Milwaukee & St. Paul Railway Company?

A. General Manager.

Q. What had the Wabash Railroad Company to gain by the passage of these resolutions?

A. Its wheelage proportion of all these credits.

Q. What had the Des Moines Union to gain?

A. To give over to the proprietary companies their proper dues.

Q. What had it to gain by the enactment of this resolution?

A. Nothing to gain.

Q. The Milwaukee Company had some kind of an interest in the passage of the resolution, that the Wabash had?

A. Yes, sir.

Q. And whatever those two companies would gain in the passage of this resolution, the Des Moines Union would lose?

A. Our contention was that the Des Moines Union wasn't entitled to anything; we was only claiming that.

Q. Was that claim made as a director of the Des Moines Union Railway Company? A. Yes, sir.

Q. Now, then, the other persons interested in the Des Moines Union Railway Company, took the opposite view, didn't they? A. Yes, sir.

Q. And in voting for this action, that would take this money away from the Des Moines Union over the protest of a majority of its directors and stockholders and give it to the Wabash, you were acting solely, as you believed, in the interest of the Des Moines Union?

A. Yes, sir, as I thought was right and proper. I would like to have that go in there too.

Q. I have no doubt you thought your construction of the contract was correct.

A. That was the only way I was basing it. It is the universal practice, to make these credits by the terminal companies on the bills for operating expenses.

Defendants move to strike the answer, that it is the universal practice, as irrelevant and immaterial, and as something which could not affect the contract in controversy in this case at bar, and for the further reason that the contracts under which the practice referred to is alleged to exist are not in evidence, and it does not appear whether they provide for it or do not provide for it.

Q. Mr. Pryor, where did you get this \$312,977.75, which you stated was the amount which had been invested by the purchasers of the Wabash Railroad Company?

A. That was the amount of expenditures made by the Railroad Company up to the 29th May, 1884, and by General Dodge, and was taken from the adjustment of the account when the bonds of the Des Moines Union Railway Company were issued.

Q. Was that on the books of the Wabash Railroad Company?

A. The Wabash, St. Louis & Pacific Railway Company; that includes the cost of the round house in Des Moines, but does not include the adjustment of the interest on these expenditures up to the time the bonds were issued.

Q. Who operated the terminal properties after January 2, 1882?

A. The parties to the contract of 1882, which were the Des Moines & St. Louis, the Des Moines Northwestern and the St. Louis, Des Moines & Northern. My recollection is they were managed by the Des Moines & St. Louis, in the name of the Des Moines & St. Louis.

Q. Now, by that contract of January 2, 1882, you mean the contract of that date which is incorporated in the original articles of incorporation of the Des Moines Union Railway Company?

A. Yes, sir. This contract or the parties to this contract were the Des Moines, St. Louis Railway Company, the St. Louis, Des Moines & Northern, the Des Moines Northwestern Railway Company, C. M. Dodge, James F. How, James F. How Trustee, the Wabash St. Louis & Pacific Railway Company, the latter company consenting to the contract.

Q. You don't mean that each of these parties operated this road?

A. No, I mean—I catch from your question who managed and operated?

Q. Yes, who operated it?

A. The St. Louis & Pacific had the actual management and operation of it.

Q. Now, when did the Des Moines Union take over the property and begin to operate it? A. May 1, 1888.

Q. How did you get that date?

A. That is my recollection of it. I think the cash books of the Des Moines Union Railway Company show they commenced to operate it on that date.

Q. Aside from some record you wouldn't remember the date?

A. Only from looking over the records and being familiar with the record.

Q. You don't remember the exact date when the Purchasing Committee commenced operating the Des Moines & St. Louis?

A. Not exactly.

Q. Nor the date when the Purchasing Committee stopped operating it? A. No.

Q. Nor the day when the Wabash Western commenced operating it? A. Yes.

Q. When was that?

A. April 1, 1887. The Wabash Railroad Company, on or about the 1st of August, 1889, when it was formed.

Q. I mean the day it actually began to operate?

A. That is when it commenced to operate any of the property.

Q. Was that the day it was organized?

A. The date of its organization.

Q. They got them all turned over and commenced operating—

A. They took possession of the property and commenced to operate on the 1st of August, 1889, although some of the mortgages were dated prior to that time.

Q. Now, there is set out here as exhibit "G" to the Bill, a resolution adopted by the Des Moines & St. Louis Railroad, January 1, 1885; it is page 19 of the exhibits, I guess, and says at the end of the exhibit here: Resolved that the proper officers of the Company be authorized to transfer the management and operation of its property in Des Moines, so far as the same may now be vested in the Company, on the 1st of January or as soon thereafter as practicable. Now, weren't you mistaken as to the date when the property was turned over to the Des Moines Union, and was it not turned over under this resolution of January 1, 1885?

A. No, my recollection is it was on the 1st of May, 1888.

Q. I see there is another resolution—

A. That resolution says, the 1st of January or soon thereafter. It looks like it took a long while thereafter.

Q. I call your attention to another resolution; this may clear it up some. There was a resolution adopted on the 8th of November 1887 by the Board of Directors of the Des Moines & St. Louis, which is exhibit "H"; that wasn't so very long before the property was turned over. Would you say that resolution confirms your recollection that the property was not turned over in 1885, under the earlier resolution?

A. I don't think it was turned over until May 1, 1888. I think this resolution of November, 1887 authorized the making of deeds from Hew to Dodge to the Des Moines Union Railway Company, and the last part of the resolution provides that the President and Secretary be and they are hereby authorized and directed to execute deed to the Des Moines Union.

Q. You think no action was taken under that earlier resolution?

A. No, sir; I don't think any action was taken until May 1, 1888.

Q. There was a resolution, I think, passed by the St. Louis, Des Moines & Northern, January 1, 1885; that is exhibit "D" page 15 of the exhibits, and then it seems to have passed a subsequent resolution on the 5th of November, 1887. Your idea would be it was turned over under that second resolution, and not as early as the date of the first one?

A. I think not.

Q. Which do you think not?

A. I think it wasn't turned over until the 1st of May, 1888.

Q. I noticed you referred to a memorandum on your direct examination; did you have all the questions propounded to you written out? A. Most of them.

Q. And the answers? A. No answers.

Q. Just the questions? A. Just the questions.

Witness Excused.

WELLS H. BLODGETT being duly sworn, examined by J. L. Minnis, Esq., on the part of complainants, testified as follows:

Q. What was your professional business in January, 1890?

A. General Solicitor of the Wabash Railroad Company.

Q. Where were the General Offices of the Wabash Railroad Company located in January 1890; where did you reside?

A. The General Offices of the Wabash Railroad Company were located in St. Louis, Missouri, and my home was there.

Q. Where have the general offices of that Company been located, and where have you resided since that date?

A. The general offices of the Wabash Railroad Company have been located in St. Louis since the date of the organization, of that Company, in 1889, and I have resided there all that time.

Q. Who was President of the Wabash Railroad Company during the years 1889 and 1890? A. O. D. Ashley.

Q. Where did he reside?

A. He resided in New York City.

Q. Who was James F. How and where did he reside?

A. Mr. James F. How was in 1889 and 1890 and on up to the time of his death in 1896 Vice President of the Wabash Railroad Company, and he resided in St. Louis at the time of his death.

Q. And prior thereto?

A. Yes, sir, from the date of the organization, of the Company.

Q. Who was C. M. Hayes and where did he reside?

A. He was the General Manager of the Wabash Railroad Company and he resided in St. Louis.

Q. Do you recall when he became General Manager of the Wabash?

A. On the organization of the Company. He was the General Manager of the property for some two years, of the receivership; but I think he was made General Manager in 1887; that is my recollection, on the death of Mr. Talmage.

Q. How long did he remain General Manager?

A. He remained General Manager of the Wabash Railroad Company up to 1895.

Q. Were the offices of Mr. How, Mr. Hayes and yourself in the same building in St. Louis? A. They were.

Q. Did you ever confer with Mr. How as Vice-President, and Mr. Hayes as General Manager, respecting the property interests and business affairs of the Wabash Company?

A. Yes, daily; almost daily; always daily when I was in the city; when we were all in the city.

Q. You were their legal advisor?

A. I was general solicitor of the Company.

Q. Did you ever own any stock in the Des Moines Union Railway Company? A. I never did.

Q. Were you at the so-called annual meeting of the stockholders of the Des Moines Union Railway Company, held in Des Moines on or about January 3, 1890? A. I was not.

Q. You say you had frequent conferences with Mr. How, the Vice-President, and Mr. Hayes, the General Manager of the Wabash Company? A. Yes, sir.

Q. Now, I will ask you, whether at any time during the year, 1890, or before that date, you ever suggested to them, or either of them that it was necessary or advisable to amend in any respect the Articles of Incorporation of the Des Moines Union Railway Company?

Objected to as being secondary and incompetent to any issue in this controversy, and is immaterial, because the advice that may have been given to these gentlemen on the subject, cannot affect the fact that they themselves signed the amendments and acknowledged them, or the legal effect of the amendments as signed and acknowledged.

A. I never did. I never so advised. I never suggested that amendments were necessary.

Q. Did Mr. How or either of them ever suggest to you it was necessary or advisable to amend in any respect the articles of incorporation of the Des Moines Union Railway Company?

Same objection as last above.

A. They never did. They never conferred with me on that subject, or took my advice respecting the matter.

Q. Will you look at the record of the proceedings had at an alleged meeting of the stockholders of the Des Moines Union Railway Company on the 3rd day of January, 1890, and see whether any mention is there made of any proposed changes of the articles of incorporation of the Des Moines Union Railway Company, and if you find anything, will you please state what is there stated?

A. Yes, sir; I find in the record of the meeting held at Des Moines, Iowa, January 3, 1890, the following: "James F. How moved that the question of amending the articles of incorporation of this Company, as well as the question concerning the issuing of stock for the purchase price of the terminal property be referred to attorneys W. H. Blodgett and A. B. Cummins for investigation and their recommendation."

Q. Were you present at that meeting? A. No, I wasn't.

Q. Did the Wabash Railroad Company have an attorney or legal advisor at Des Moines, during the year 1890 and before that date?

A. Yes, sir; Mr. A. B. Cummins was our legal advisor here at Des Moines; he was the head of the firm; it may have been that we corresponded in the name of the firm of Cummins & Wright and whoever was associated with him.

Q. When did he become attorney for the Wabash Railroad Company at Des Moines?

A. Mr. Cummins began representing the Wabash interest, I think, when Mr. Runnells left, which was probably, as near as I recollect, in 1888.

Q. How long did Mr. Cummins remain the legal representative of the Wabash Company at Des Moines?

A. Well, we always regarded Mr. Cummins as our counsel here up to the time when he was elected Governor. I don't remember the year; I would say five or probably six years ago. After he was elected, I never corresponded with him about any legal matters.

Q. When and from whom did you first learn that it had been suggested as being either necessary or advisable to amend the articles of incorporation of the Des Moines Union Railway Company?

A. I first heard of the proposition to amend the articles in January, 1890, in a letter written to me by Mr. Cummins.

Q. Have you that letter? A. Yes, sir.

Mr. Minnis: I will read the letter, which is as follows:

Cummins & Wright,
Attorneys.

Des Moines, Iowa, Jan. 22nd, 1890.

Wells H. Blodgett,
Gen'l Sol'r Wabash Railroad Co.
St. Louis, Mo.

Dear Sir:

At the last annual meeting of the stockholders of the Des Moines Union Railway Company, I suggested to those present several matters, in which, in my opinion, the articles of incorporation of the company ought to be amended. Upon this there was a resolution offered and adopted, appointing you and myself a Committee to redraft these articles, and present our changes to a meeting of the stockholders on the 18th of February. I have made a draft of amended articles thinking it would save time to be able to present something tangible to you whenever we could get together. I regard the matter as an important one, and a change as absolutely necessary for the proper conduct of the company. We shall have to hold a consultation in regard to the matter within a short time, and I write to ask you when and where this consultation shall be held. If you desire me to come to St. Louis, I will endeavor to do so. If you can fix a day sometime three or four days in advance of the time you write. Be good enough to give me an early reply and oblige.

Yours very truly,

(Signed)

A. B. CUMMINS.

Q. Did you have anything to do with the preparation of the alleged articles of incorporation of the Des Moines Union Railway Company?

A. No, I never took any part in the drafting of the amended articles. I left that to Mr. Cummins.

Q. The record Book of the Des Moines Union Railway Company shows that the annual meeting of the stockholders of that Company, held in January, 1890, was adjourned to meet the 18th of February, 1890; did you attend the adjourned meeting? A. No, I did not.

Q. You didn't attend it? A. No.

Q. The record book of the Des Moines Union Railway Company shows that at the adjourned meeting of the stockholders of said Company on the 18th day of February, 1890, the meeting was again adjourned until April 8, 1890. I will ask you whether you attended any meeting of said stockholders held on or about April 8, 1890? A. I did not.

Q. I believe you have said you owned no stock?

A. No, I owned no stock.

Q. Did you give any proxy or writing to any one?

A. I wouldn't say that I didn't because if I had a share of stock and Mr. Hubbell asked me to sign a proxy, I would have signed it.

Q. You would have signed any statement?

A. Anything of that sort, if Mr. Hubbell had said so that it was necessary or proper for me to sign.

Q. I believe Mr. F. M. Hubbell had been identified with the Wabash interests after the organization of the Des Moines & St. Louis Railway Company?

A. Yes, we always regarded Mr. Hubbell as a representative of the Wabash interests in Des Moines; I will say that from 1880 or 1881, I don't remember just which it was, when we commenced the construction of the line from Albia up to the City of Des Moines.

Q. And how long thereafter?

A. Oh, I always regarded him as a representative of the Wabash interests and do now. We have always conferred with him freely about all our matters here.

Q. When he set up this claim that the Des Moines Union Railway Company owned this terminal property, was that the first time you was advised of him occupying an antagonistic attitude towards the Wabash interests here?

A. Yes, that was the first I heard of Mr. Hubbell making a claim to anything that was adverse to the Wabash.

Q. Between the date on which you received the letter I have read from Mr. Cummins, and the 8th of April, 1890, did you have any personal conference with Mr. Cummins in which he explained to you wherein it would be beneficial to the Wabash interests to amend the articles of Incorporation of the Des Moines Union as he had proposed?

Objected to as being immaterial.

A. I have no recollection of meeting Mr. Cummins or conferring with him, or about the proposed amendments to the articles. It is possible that I may have written him on the subject in reply to his letter, but my letter books for that year were burned. I see there is a memorandum in my hand writing in pencil on this letter from Mr. Cummins to the effect that I answered it sometime in February.

Q. You haven't got the answer?

A. I say, my letter book for this year was destroyed.

Q. Do you remember the contents of the letter?

A. No, I couldn't recollect. I am quite sure if I had a personal conference with Mr. Cummins on the subject, I would recall it; I have no recollection of having any.

Q. Did you ever, as General Solicitor of the Wabash Company or otherwise, suggest to Mr. How, the Vice-President, or Mr. Hayes, the General Manager of that Company, that it

would be prejudicial to the Wabash interests to have the articles of incorporation of the Des Moines Union Railway Company amended as prepared by Mr. Cummins?

Objected to as secondary, hearsay and incompetent.

A. I never did. I never advised that it would be either beneficial or prejudicial.

Q. Did you give any advice at all about it?

Same objection.

A. I left that entirely to Mr. Cummins and to Mr. Hubbell as our representatives here. I wouldn't have undertaken to have advised against their judgment.

Defendants move to strike the last statement of the witness as purely argumentative and a statement not of any fact, but what the witness thinks he might have done under circumstances that may have existed or may not.

Q. You have stated that Mr. Hubbell was the representative of the Wabash interests in Des Moines. I will ask you if he purchased any property for terminals or tracks, or superintended their purchase for Des Moines Terminals?

A. Yes, sir; I know from my knowledge of what was being done respecting the terminals, and my association and conversation with Mr. Hubbell that he took an interest in securing and purchasing for the Wabash Railroad Company, or with funds supplied by the Wabash Railroad Company, property here in Des Moines for terminal purposes, and also that he represented the Wabash interests in securing ordinances from the City of Des Moines respecting the laying of tracks in and across streets. I knew from conversations with Mr. Hubbell and what I knew of the business, that he was taking an interest in these matters.

Q. In whose name did he take the title to property purchased by him?

A. I think mostly in the name of How and How, Trustee.

Q. Did he take any?

A. I wouldn't say that Mr. Hubbell negotiated for all that was taken in the name of Mr. How or How, Trustee, but that he took an interest in the purchase of a considerable portion of that, and also that Mr. Hubbell took some in his own name.

Q. Did he execute a declaration of trust with respect to the parcels purchased in his own name?

A. Yes, for instance, Lots 12 and 13, Block 11. Lots 10 and 11 in Block 12 Lot 16 in Block 13, Lot 7 in Block 16 and Lot 9 in Block 21, were taken in the name of Mr. Hubbell and

he executed this Declaration of Trust, stating that he held for the Wabash Railroad Company and that he would convey the same.

Q. Please read the Declaration of Trust.

The Witness reads as follows:

"Know all men by these presents that I F. M. Hubbell of Des Moines, Iowa, hold in trust for the Des Moines & St. Louis Railroad Company and for the Des Moines Northwestern Railway Company the title to the following real estate:

lots 12 and 13 in Block 11
lots 10 and 11 in block 12
lot 16 in block 13
lot 7 in block 16
lot 9 in block 21

all in the town of Des Moines now in the corporate limites of the city of Des Moines, Iowa.

And I agree to convey the same to said companies, or to such person as they may direct whenever requested so to do.

In witness whereof I have hereto set my hand this March 11, 1881.

F. M. HUBBELL.

State of Iowa,
Polk County.

On this Mar. 11, 1881, before me a Notary Public in and for said county personally came F. M. Hubbell personally to me known to be the identical person whose name is affixed to the above instrument as grantor and acknowledged the same to be his voluntary act and deed for the purpose therein expressed.

Witness my hand and seal on the date last above written.

(Seal)

C. HUTTENLOCHER,
Notary Public,
Polk Co., Ia."

On the back of said instrument appears the following:

"F. M. Hubbell
to

Des Moines & St. Louis R. R. Co., & Des Moines Northwestern Railway Co.,

Declaration of Trust.

March 11, 1881.

Lots 12 and 13 block 11 deed
" 10 " 11 " 12 deed
" " 16 " 13 deed
" " 7 " 16 deed
" " 9 " 21 deed

In pencil the following:

"Above property conveyed by Hubbell by deed dated March 3rd—81 to Jas. F. How Trustee—Recorded in Book 101 page 119."

Q. To what company was the property purchased by Mr. Hubbell, in Des Moines, or on account of the Wabash interests, subsequently conveyed?

Objected to as not the best evidence and incompetent on that account.

A. I will state it was conveyed to the Des Moines Union Railway Company; I will state that for what it is worth.

Mr. Guernsey: I will withdraw the objection. I didn't know what the answer was going to be.

Q. Do you recall to have signed and acknowledged a paper about the month of April, 1890, in which it was stated that the articles of incorporation of the Des Moines Union Railway Company had been amended? A. I do.

Q. At the time that you signed that paper had you attended any meeting of the stockholders of the Des Moines Union Railway Company, at which action had been taken respecting any amendments of the articles of incorporation of that company? A. I had not.

Q. Do you know who prepared that paper?

A. I know that Mr. Hubbell brought it to me and that he said it had been prepared by Mr. Cummins, but Mr. Cummins wasn't with Mr. Hubbell when the paper was brought to me in St. Louis.

Q. When you say Mr. Hubbell, you mean Mr. F. M. Hubbell?

A. Yes; I haven't spoken of Mr. F. C. Hubbell in my testimony.

Q. What induced you to sign and acknowledge that paper?

Objected to as irrelevant and immaterial.

A. I signed it because it was brought to me by Mr. Hubbell, and I regarded Mr. Hubbell as a representative of all our business interests here outside of our law business.

Q. And he stated, that Mr. Cummins, the Wabash attorney had prepared the articles:

A. Yes, he stated to me it was prepared by Mr. Cummins, or that Mr. Cummins had advised it.

Q. What investigation, if any, did you make respecting the paper?

Objected to as irrelevant and immaterial.

A. Absolutely none. I did not exercise my judgment on these matters. I relied implicitly on Mr. Hubbell and Mr. Cummins respecting all Wabash business matters in Des Moines.

Defendants move to strike the answer as irrelevant and immaterial, and for the further reason, that it does not appear that the witness did not have ample opportunity to examine this paper or every other paper he ever signed, and to exercise his judgment in reference to it if he cared to.

Q. Were you ever authorized by the Wabash Company to sign that paper?

Same objection, and as calling for a conclusion.

A. Oh no, I just signed it and acknowledged it. I remember very well when Mr. Hubbell brought it to the office, to the Wabash office in St. Louis, and I signed it and acknowledged it along with Mr. How or Mr. Hayes, perhaps both, but I don't think I signed it in their presence. I think I signed it in my own office.

Q. Were you a director of the Des Moines Union Railway Company at that time?

A. Well, I wouldn't say. The Record may show I was a director; I wouldn't say that I was.

Q. Did you in signing these articles act for the Wabash Railroad Company, or did you act on the suggestion of Mr. Hubbell as a director or supposed director of the Des Moines Union?

Objected to as calling for a conclusion and incompetent on that account.

A. I understood from Mr. Hubbell that the record did show that I was a director, and that was a reason why he asked me to sign the paper. I was so unfamiliar with the matters here that I couldn't state whether my name did or did not appear as a director on the record of the Des Moines Union.

Q. You mean a director of the Des Moines Union Railway Company? A. Yes.

Q. Who prepared the instrument dated May 10, 1889 that is attached to the Bill of Complaint in this case as exhibit "P"? A. I did; I prepared it.

Q. At whose request?

A. Well, at the request of Mr. Hayes, General Manager of the Wabash, and General Dodge, and I think, Mr. Hubbell. I was here in Des Moines about the time it was agreed to be necessary to have such a paper and at one time when we conferred about it, Mr. Hayes and General Dodge was here, and of course, we conferred with Mr. F. M. Hubbell.

Q. According to their statements, what was the purpose of making that agreement?

Objected to as calling for a conclusion, hear-say testimony and incompetent. And further, it is incompetent because the instrument speaks for itself and cannot be varied by parol evidence.

Q. Mr. Hubbell was present?

A. He was present at the meeting when the resolutions were adopted respecting that matter. I am sure General Dodge was present, and I know, either Mr. Hayes or Mr. How, one of them, and perhaps both; my impression is they were both here.

Mr. Guernsey: I want to show that so far as the testimony being hear-say is concerned, the objection is in behalf of the Des Moines Union and the defendants other than Mr. Hubbell.

Q. What was said about the objects and purposes of making that agreement?

Same objection.

A. It was considered necessary to have something in addition to the agreement of January 2, 1882, for these reasons: In the first place the agreement of January 2, 1882 made no provision for the payment of interest and did not provide how the interest charge should be distributed among the railroad companies using the property. That was one reason. Another reason was, that the contract of January 2, 1882, did not obligate the railroad companies who were parties to it or their assigns to use the terminal.

Q. Or pay interest.

A. Nor pay the interest. Let me see—there was the interest charge and the matter of using the property, and then the contract of January 2, 1882, put everything, all the expenses of maintenance and operation of all the property on a wheelage basis, and Mr. Hayes and General Dodge and all the parties interested thought that the cost of operating the round houses should not be on a wheelage basis, but should be distributed among the railroad companies according to the number of engines that were housed and taken care of for each company; and those were the three things wherein, I think, the contract of May 10, 1889, differed from the contract of January 2, 1882.

Q. It was to cover those points?

A. It was for those reasons that all parties agreed it would be advisable to have a supplemental agreement.

Defendants move to strike all this testimony for the reasons last urged against it.

Q. The Des Moines Union had theretofore, made a mortgage and issued a series of bonds? A. Yes.

Q. Do you recall how long those bonds were to run?

A. They matured 30 years from May 1, 1888.

Q. In section 8 of that agreement, Exhibit "P", it is provided that "so far as relates to the rental necessary to raise a fund for the payment of interest upon the mortgage bonds, this contract shall be retrospective and shall govern from and after the 1st day of May, 1888". That was the date of the maturity of the bonds, was it not?

A. Thirty years from May 1, 1888, the bonds matured.

Q. How long was the contract of May 10, 1889, exhibit "P" to remain in force?

A. It was to remain in force for thirty years from May 1, 1888.

Q. So the contract provided for the payment of interest on these bonds for the entire period?

Objected to as being argumentative and not the best evidence.

Q. In paragraph 25 of the answer in this case, it is stated as follows: "These respondents further admit that they claim and assert that the only rights of the complainants in the said terminal property are their rights under the contracts exhibits "P" and "R", and that upon the expiration of the said contracts the complainants will not have the right to use the said terminal property except upon reasonable terms and conditions, and upon payment by them of a reasonable compensation for the rights which may be granted to them under contracts which may then be made with the Des Moines Union Railway Company".

Now, I will ask, when you first heard the defendants or anyone else assert a claim of title to these terminals in the Des Moines Union Railway Company, adverse to any title of the plaintiffs in this case, such as is stated in that part of the answer I have quoted?

Objected to as being irrelevant and immaterial.

A. I first heard that the claim had been made from Mr. Pryor. He stated, that it had been made by Mr. Hubbell at a meeting that he had attended in Chicago at the office of the Chicago, Milwaukee & St. Paul Railroad Company, something

like, I would think, six months or a year after that, I attended a meeting at the office of the Milwaukee & St. Paul Railroad Company, at which Mr. McKenna, Mr. Pryor, Mr. Hubbell and Mr. F. C. Hubbell were present, and Mr. Hubbell there stated that they made the claim that is asserted in the answer, respecting their title to the terminal property in Des Moines. That was the first that I heard of that claim through Mr. Hubbell or any one representing Mr. Hubbell.

Q. You may state whether that was the first time that you were informed that Mr. Hubbell was not acting, so far as the Wabash Company was concerned, in its interest and behalf?

Objected to for the same reasons, also calling for a conclusion and incompetent on that account.

A. Mr. Hubbell asserted a claim that didn't take effect for some ten or twelve years after he made the claim. So that I always regarded him as representing Wabash interests in Des Moines under the existing contract of May 10, 1889. But the claim that he made was one that would take effect some ten or 11 years after the date on which he stated that that was his claim.

Defendants move to strike the answer of the witness, so far as he states how he regarded the situation, as incompetent, because it is a mere statement of his own personal opinions.

Ans. Cont'd. With reference to the date of that meeting, I would say it was just about one year before this suit of the Wabash and the Milwaukee & St. Paul against the Des Moines Union was commenced.

Q. Did Mr. Hubbell state to you at the time he brought to you the alleged amended articles for your signature, that the object of the amended articles and the effect of them would be to vest title to the terminal properties in the Des Moines Union Railway Company?

Objected to as incompetent and hear-say; for the further reason, that the representatives of the Wabash Railroad Company had ample opportunity to read these amended articles and the record of the Des Moines Union Railway Company shows they were present when they were adopted and moved the adoption of many of them, so that it would be immaterial, what, if anything Mr. Hubbell said on the subject.

Q. Now, state, what, if anything he said on the subject?

Same objection.

A. I don't think Mr. Hubbell ever made any explanation to me as to their effect, or made any statement respecting what effect they would have.

Q. Are you still connected with the Wabash Railroad Company, and have you been since the date of its organization?

A. I am still connected with the Company.

Q. What is your position now?

A. Vice-President and General Counsel.

Q. I believe you are also a member of the Board of Directors? A. Yes.

Q. Did the alleged amendments to the articles of incorporation of the Des Moines Union Railway Company affect in any manner the management of the terminal property, or the business relations of that company to the railroad companies using the terminals under the contract or instrument dated May 10, 1889, which is attached to the Bill as exhibit "P"?

Objected to as incompetent and calling for a conclusion.

A. The change in the articles of incorporation of the Des Moines Union Railway Company, made no change in the relations, in the present relations of the Wabash Railroad and the other companies using the terminals.

Q. Or to the public?

Same objection.

A. It had no effect at all; nothing has ever been done to my knowledge, under the amended articles.

Q. As I understand, Mr. Hubbell's claim is merely, that at the expiration of the contract of date, May 10, 1889, exhibit "P", their rights will be asserted?

Same objection.

A. That it will be necessary to make a new contract is Mr. Hubbell's claim, but the relations of the parties under the contract of May 10, 1889, has never been changed or affected in any way by reason of these amendments.

Cross-Examination

By N. T. Guernsey, Esq.:

Q. I want to call your attention to the original amended articles of incorporation of the Des Moines Union Railway Company, and ask you whether the signatures of Charles M. Hayes, James F. How and yourself are the genuine signatures there? (presents amended articles to witness)

A. They are.

Q. How many articles of incorporation have you signed, or amendments to articles, in the last 20 years?

A. I don't recall that I have ever been an incorporator.

Q. Now then, Colonel, since, 1890, has a copy of these amendments been in your office?

A. I wouldn't say they never come under my observation.

Q. I simply ask you whether since 1890 you had a copy there?

A. I wouldn't say whether there was a copy sent to my office or not; I couldn't say that.

Q. Now, you remember a printed pamphlet headed: "Original and Amended Articles of Incorporation and Mortgage of the Des Moines Union Railway Company?"

A. Yes.

Q. You have one of them as one of your exhibits here?

A. Yes.

Q. And that has been in your office for at least 15 years, hasn't it?

A. I wouldn't say the first time that I ever read the article or examined it. I wouldn't say what printed pamphlet there was in my office, because that would be impossible.

Q. Would you say affirmatively that there has been any time since the adoption of these amendments, that the Wabash Railroad Company has not had a copy of it?

A. I wouldn't say they haven't had a copy of them.

Q. You wouldn't say they haven't had a copy of them ever since they were adopted? A. Oh, no.

Q. You wouldn't say they haven't had an opportunity to examine them whenever they wanted to?

A. No, I wouldn't say that, they had abundant opportunity.

Q. Now, do you remember the Wabash Railroad Company's objecting to making leases to other railroads for the use of those terminals, unless it could have an extension of its lease?

A. I don't think I ever did.

Q. Do you remember such things occurring prior to September, 1901?

A. I never heard it contended by anybody connected with the Wabash that the Wabash Company would not or should not assent to leases by the Des Moines Union Railway Company of its property to other railroad companies, unless there should be an extension of the existing contract of May 10, 1889. I never heard of that. It might have been made by Mr. Ramsey, or might have been made by Mr. Ashley; but I didn't hear of any objection on that ground.

Q. Who was Mr. Ramsey?

A. Mr. Ramsey was the General Manager of the Wabash Railroad from 1895 or 1896, I think, for nine years.

Q. He was also Vice President?

A. He was Vice President, yes, sir.

Q. Now, the claim that Mr. Hubbell asserted, if I understood you, the one you referred to, was, that at the expiration of this contract, the Wabash, in order to continue the use of the property, would have to enter into another contract?

A. That was the substance of it.

Q. Now, you knew that the Purchasing Committee of the Wabash Railroad Company had sold to Mr. Hubbell, or him and his associates, some stock in the Des Moines Union Railway? A. Yes, stock and bonds; I knew that.

Q. And you knew, in connection with that sale of stock, and prior to the meeting of January, 1890, they had been writing and undertaking to agree to some amendments of the articles of incorporation of the Des Moines Union Railway Company?

A. Oh, no; I didn't know that; I wouldn't know that.

Q. You wouldn't say that wasn't so?

A. Oh, no; I couldn't tell; I wouldn't say it wasn't so, but I didn't know it. I didn't know of the sale of stock and bonds to Mr. Hubbell for probably, for a good many months after it had taken place.

Q. You remember, don't you that out of this sale that was made involving some of the interests in this terminal property, a controversy arose between the Des Moines Northern & Western and perhaps Polk & Hubbell and the Purchasing Committee?

A. The only controversy that I remember is one respecting a lot up here.

Q. That was a controversy that arose when?

A. Well, I wouldn't state when; I couldn't state the date because I wasn't in charge of the litigation; only remember of the suit.

Q. Didn't you have anything to do with the litigation, Colonel? A. Not directly.

Q. Didn't you in connection with that litigation write a letter in which you stated that the ownership of the property was represented by the stock and direct that a defense be made upon that ground? A. Oh, I don't know.

Q. I will read to you a letter dated January 11, 1897, which is as follows:

"The Wabash Railroad Company.

General Solicitor's Office.

Wells H. Blodgett, Gen'l Solicitor.

St. Louis, Jan. 11, 1897.

W. A. Park, Esq.,

Atty., Des Moines, Iowa.

Dear Sir:

I have been absent in the east for ten days and only returned to my office this morning. On my table I find yours of the 8th, and in reply beg leave to say, that Mr. James F. Joy is dead, and I think notice thereof should be given to the plaintiff. In regard to the question involved in the litigation

tion I think the first one is the one you state concerning the title acquired by the plaintiffs in the contracts. Should that be held against us, then a question arises on the construction of the contracts themselves. I know that what the Purchasing Committee intended to convey free from all incumbrances, was the stock and not the lots and real estate owned by the Company. That was certainly the understanding of every member of the Wabash Purchasing Committee throughout the negotiations and correspondence, and that is the point on which the Purchasing Committee have always relied for their defense, and that is a point in the case which they want fully presented, and on which they desire to take the opinion of the court. I have not got the contract before me to-day but will endeavor to examine it and write you more fully by to-morrow's mail.

Very truly yours,
(signed) WELLS H. BLODGETT."

I will ask you whether that letter was signed by you about the time it was written?

A. That letter is signed by me; that is my signature.

Q. And that relates to this controversy that you have referred to?

A. Well, I don't remember; there was one suit that grew out of a claim to a lot or some real estate, and if there was more than that one I don't recall it.

Q. In this suit that you remember, Colonel, the contention was this, wasn't it, the Des Moines Northwestern claimed that the Purchasing Committee in selling that road had sold with it one-fourth of the terminal property, and that that was to be free from incumbrance, and that an incumbrance on the lot of some \$2800.00 or \$3,000.00 was something that came within that contract and the Purchasing Committee ought to take care of it. Doesn't that refresh your recollection, so that you remember what the suit was?

A. No; I couldn't remember how the claim came about. Really, I don't think I ever gave it any personal attention at all.

Q. You did write the letter which has just been shown to you?

A. Oh, yes, I wrote the letter. No doubt I stated there what I understood to be the situation.

Q. I want to call your attention to another letter, which I will read, the letter being dated November 23, 1895, which is as follows:

"The Wabash Railroad Company

General Solicitor's Office,

Wells H. Blodgett, Gen'l Solicitor.

St. Louis, Mo. Nov. 23, 1895.

W. A. Park, Esq.

Atty., Des Moines, Iowa.

Dear Sir:

An attachment suit was brought recently in the district court of your city by the Des Moines Northern & Western Railway Company, and the Des Moines Union Railway Company vs. James F. Joy, O. D. Ashley, Thomas H. Hubbard and Edgar T. Wells, constituting the Wabash Purchasing Committee. The action is for breach of covenant contained in a certain contract under which the Purchasing Committee conveyed, or agreed to convey, to Polk & Hubbell, the Des Moines Northwestern Railroad and an interest in certain Des Moines terminal properties.

They claim that the Committee contracted to give them a clear title, and that some of the property was incumbered. An attachment has been issued and levied on the interest of the Committee in the Des Moines & St. Louis Railroad. The amount involved is between twenty-seven and twenty-eight hundred dollars. Mr. Cummins, who represents the plaintiffs, has said he would take no default for a few days, but the time will expire very soon, perhaps Monday.

I have written to New York for instructions concerning a settlement, but have received no reply, and it is necessary to have an answer in at once. Will you please take charge of the case and file an answer on Monday, or see Mr. Cummins and get the time for answering extended by stipulation. The Committee may think the proper thing to do, will be to make the plaintiffs prove their case. They are trustees and may consider it their duty to do so. What I want is to prevent a default until I hear from them with respect to their wishes in the premises.

Wire me on Monday whether you receive this and will attend to the matter.

Very truly yours,

WELLS H. BLODGETT."

Now, I will ask you whether that is a letter written by you about this same suit, about its date?

A. That letter is signed by me and no doubt is genuine. I don't recall having written it. I don't recall having ever met

Mr. Park, and he must have been suggested to me as a proper man to employ in that case to represent the company, because of the fact that Mr. Cummins was representing the Des Moines Northern & Western road in this particular case.

Q. Now, Mr. Park was employed to represent the defendants in the case by you, was he not?

A. I suppose he must have been, but I didn't know him personally, and he must have been recommended to me by some one here.

Q. Of course, whether he was recommended or not is immaterial. Afterwards he was succeeded by some other lawyers with whom you had correspondence, was he not?

A. Well, now, Mr. Guernsey, I don't remember that there were two firms connected with it. Lawsuits were such common things with me.

Q. Much more common than directors' meetings?

A. Yes, more common than directors' meetings.

Q. Baily, Ballrich & Preston were employed after Mr. Park's death to finish up this litigation for you?

A. I presume that is true. You state that in your answer.

Q. And they defended on the ground you suggested, namely, on the ground, what was sold was the stock, and that represented the interest in the terminal property, and therefore there wasn't any breach in the contract?

A. I don't remember having suggested that. I think what I said in my letter is a sound proposition.

Q. And the Wabash paid them for their services in the case?

A. Oh, I suppose they did, it was my custom always.

Q. Now, you have no recollection about this suit aside from what these letters show?

A. But for those letters, I wouldn't have any recollection about it, the details of the suit. I would remember there was a suit and that it involved a controversy about some real property in Des Moines on which there was some incumbrance.

Q. Now, this contract, Colonel, on which this suit was brought, contains this language—I am reading now from the copy of it that is attached to the petition—I will read from the second contract; there is a contract, and a more formal contract:

“Simultaneously with the execution and delivery of said bond, the Committee will transfer to Messrs. Polk & Hubbell or their assigns, their one-fourth interest in the terminal property at Des Moines, and will transfer also 5037 shares of stock of the Des Moines Northwestern Railway Company, and also all the interest of the parties of the second part in the

equipment of the said Des Moines Northwestern Railway Company".

Now, then, you say in this letter of January 11, 1897, "I know that what the Purchasing Committee intended to convey free from all incumbrances was the stock and not the lots and real estate owned by the Company." Referring to the conveyance, you mean this conveyance that is specified in this contract?

A. I didn't prepare that contract; it was prepared in Des Moines. I wasn't familiar with it, unless I had a copy.

Q. Now, I will call your attention to a letter, that is dated November 25, 1895, addressed to W. A. Park, Esq., Des Moines, Iowa, signed in type-writing, Wells H. Blodgett, General Solicitor, and I will ask you if you recognize that as a letter which came from your office at about that time?

A. Well, it looks as though it come from my office, but I don't think it was dictated by me. I think it was dictated by Mr. Winston at my office. I always signed my letters, but I have no doubt this one came from my office though.

Q. This letter says, you enclose copy of petition and exhibits in the case of the of the Des Moines Northern & Western Railroad Company et al, vs. James F. Joy, et al, concerning which you wired Saturday.

A. That is a few days after the letter you handed me.

Q. That is about two months before the letter I handed you, the other is November 25. So that prior to your writing this letter of January 11th, 1897, you had in your office there the copy of this petition, which includes these contracts?

A. I would suppose so, although I have no distinct recollection about it; I would assume that I had.

Q. Now then, when you used this language in the letter: I know that what the Purchasing Committee intended to convey free from all incumbrances was the stock and not the real estate owned by the Company, you referred to the obligation of the Committee to convey the one-fourth interest in the terminal property in Des Moines?

A. From my present recollection, I couldn't say.

Q. Will you look at the contract and see whether there is anything else you could have referred to?

A. These are the papers that I sent, are they?

Q. It is a copy of the petition and papers attached to it.

A. I suppose I must have had them and sent them to Mr. Park.

Q. That is not the question; what I want to get at is this: whether there is anything in that contract that you could have referred to when you said that you knew that the Purchasing Committee when it agreed to convey a one-fourth interest in

the terminal property, intended to make that conveyance by a transfer of the stock?

A. I couldn't say whether there was anything like that in the contract. I may have said it from information outside of the contract. I stated in the letter that it was stock and not property.

Mr. Guernsey: I would like to have the record show that I have persistently requested counsel to allow the Colonel to be cross-examined without suggestions.

Mr. Minnis: Counsel made no suggestions, but supposed he was at liberty to speak to the counsel on the other side without it being taken into the record.

(Last question repeated to the witness.)

A. Mr. Guernsey, I will answer the question, I can't say whether I based that statement in my letter of January 11th, on this contract or not.

Q. Well, you based it on something that made you confident at that time that the interests in the terminal property was to be transferred by a conveyance of the stock, didn't you?

A. Just reading that, I would assume, if I had this contract before me—that in case the terminal property at Des Moines should be merged in the terminal Company, either before or after the transfer of the one-fourth interest as above, the bonds and stock received from the terminal company in exchange for such one-fourth interest shall be transferred in lieu of the property to Polk & Huddell. I would assume, if I got the idea from this contract with the alternative stated there; that if there was a merger the stock and the bonds were transferred to Mr. Huddell—you see, it is in that alternative. The stock and bonds of the terminal company were to go to Mr. Huddell, instead of the property; that is what I would say about that now.

Q. As a matter of fact, the stock and bonds were transferred under this contract?

A. They were; do you say they were? I don't know.

Q. As a matter of fact you know, don't you, that the stock and bonds were transferred to Polk & Huddell or their assignee under this contract, as a compliance with the agreement to transfer that interest in the terminal property?

A. Mr. Guernsey, I couldn't say that it was done under that contract; I know it was done.

Q. You don't remember what contract it was done under?

A. No, really, I do not.

Q. Mr. Huddell was interested in the Des Moines, North-western Railroad up to the time that was acquired by the Wabash from the date of this contract referred to, commencing

in 1886, and was also thereafter interested as a stockholder, and this interest continuing down to the present time?

A. I want to know whether that is stockholder in the Des Moines Union.

Q. Yes.

A. I have always understood that Mr. Hubbell was a stockholder in the Des Moines Union, but just when he acquired his stock, or whether there have been years in which he has not been a stockholder, and years in which he has been, I don't know, because I never examined the books, the stock books of the Des Moines Union Company to see when Mr. Hubbell became a stockholder, but it was my understanding that he became a stockholder in 1890. But I always understood that he has been an officer of the Company, but as to his stock ownership, and whether it has been continuous or not, I don't know.

Q. So far as 1890 is concerned, you take that date, because that is your information as to the date of the first stock certificates issued?

A. And I get that date from the correspondence between Mr. Hubbell and Mr. Ashley, which I have seen.

Q. Now, what other representatives did the Wabash have in Des Moines, aside from Mr. Hubbell in these early days?

A. First it had Polk & Hubbell, J. S. Runnells and J. S. Clarkson.

Q. And when Mr. Hubbell was buying this property for the Wabash, it was Mr. Clarkson that had to approve the vouchers, wasn't it?

A. Well, you know, I wouldn't know about that; that wouldn't come under my observation.

Q. During how much of the time prior to 1888, did the Wabash have a Superintendent living here in Des Moines?

A. I can't say whether prior to 1888 the Wabash Company had a superintendent located in Des Moines.

Q. Was Mr. C. F. Meek a Wabash employe?

A. Mr. Meek; I am not sure whether he was superintendent or Division Freight Agent. He represented the Wabash interests here for a number of years.

Q. Was he during any of that time director of the Des Moines Union?

A. Mr. Guernsey, I couldn't say whether he was or not.

Q. How many years was he in Des Moines representing the Wabash in some capacity, in connection with the operation of its road?

A. I should say, he was here representing the Wabash for about four years; that is my recollection.

Q. Colonel, you said that you didn't attend this meeting of April 8, 1890, but stated that if Mr. Hubbell had asked you for

a proxy, you would have given him one; as a matter of fact you gave your proxy to Colonel How, didn't you?

A. I don't remember. That wouldn't be a matter that would impress me.

Q. In the meeting of February 18, you gave your proxy to Mr. Cummins?

A. Well, I gave it; I suppose Mr. Hubbell had the benefit of it.

Q. That is what the record shows, and you have no recollection of it? A. No.

Q. And after these amended and substituted articles were adopted, do you remember whether there was any stock of the Des Moines Union issued to the Wabash?

A. Well, I wouldn't know about that; I never would see that, if there was.

Q. Colonel, did I understand you to say Mr. Cummins didn't have a conference, a conversation with you in reference to these articles, prior to the meeting of April, 1890?

A. Well, I would say, to the best of my recollection, he did not, because I believe that if he had had one, I would remember it.

Q. In his letter that you read here, he wrote to you under date of January 22, 1890, and he suggested a conference?

A. Yes.

Q. And you referred to a memorandum, which don't appear on this copy; I don't know whether you wanted it or not; it was answered the same day?

A. I think it was February 7, I answered it, 1890.

Q. You have no recollection what that answer was and you have no copy?

A. I can't recall what I wrote, and have no recollection of a conference with Mr. Cummins.

Q. And you find no further letters from Mr. Cummins with reference to this matter?

A. No, only this one that I read.

Q. I will call your attention to a letter written by Mr. Cummins to Mr. F. C. Hubbell, under date of February 24, 1897, and I will ask you whether you remember examining a copy of these amended articles at that time?

A. Respecting that matter of the contract that was under discussion in 1897, my recollection is—

Q. I didn't ask you about that contract; I asked you whether this letter refreshed your recollection, so that you could say you had examined these amended articles, at least as early as 1897?

A. Oh, I think the statement made in that letter written by Mr. Cummins to Mr. Hubbell, that he had sent me a copy of the amended articles is true. He says in this letter is follows:

"I have a telegram from Colonel Blodgett, asking me to send him a copy of the amended articles which will go to-day, and as soon as he has examined it, he will reply to my letter in which I pointed out the protection his company will receive through them".

Q. In view of that letter, don't you remember, that he not only sent you a copy of the amended articles, but that you examined them?

A. I know, at that time I did examine them. I know there was a contract about which considerable correspondence had taken place between Mr. Ramsey and Mr. Hubbell. I think I examined that correspondence, and I think reference was made there to the amended articles, but I couldn't find a copy and asked him to send me a copy.

Q. This was what you call the ratification contract of July 1897, exhibit "R" I think it is.

A. The correspondence was respecting what should be in the new contract which culminated in the execution of the ratification contract of July 1897.

Q. Colonel, did you draw the mortgage that the Wabash Railroad Company gave in 1897?

A. The Wabash Mortgage on its line?

Q. Yes.

A. There were three; I think I drew the first two. The third was a Debenture; I turned that over after struggling with it to New York, and I didn't draw it. The first and second mortgages I drew, and I don't think there were any changes—I prepared them in my office.

Q. You drew the mortgage, did you, that was dated January 1, 1899, from the Wabash Railroad Company to the Continental Trust Company of the City of New York, and called the Des Moines Division First Mortgage?

A. I prepared that.

Q. That describes the property as follows, does it not:

"all the following described real and personal property, to wit: All the railroad, road-bed, tracks and right of way of the Company known as "The Des Moines and St. Louis Railroad", as the same now is, or may be hereafter constructed, or operated in the state of Iowa, commencing at a point in or near the City of Des Moines where said road connects with the tracks of the Des Moines Union Railway Company, and extending from thence in a southeasterly direction through the counties of Polk, Marion and Monroe to the town or city of Albia in said county of Monroe, a distance of about sixty-seven miles; also, all the railroad road-bed, tracks and right of way of the Company in the state of Iowa known as the Moulton, Albia and Des Moines Railroad as the same now is or

may be hereafter constructed, operated or acquired, commencing at a point in or near the town or city of Albia, in said county of Monroe, where the same connects with the tracks of the road known as "The Des Moines and St. Louis Railroad", and extending from thence in a southerly direction through the counties of Monroe and Appanoose, a distance of about twenty-seven miles, to a point in or near the town or city of Moulton, in said county of Appanoose, where the same connects with the main track or tracks of the Company now constructed and extending from St. Louis, in the state of Missouri, to Ottumwa, in the State of Iowa; also, all the railroad, road-bed, tracks and right of way of the Company in the State of Illinois known as the Hannibal and Quincy Railroad as the same now is, or may be hereafter constructed, acquired or operated, commencing at a point in or near East Hannibal, in the County of Pike, where the same connects with the present track or tracks of the Company and extending from thence through the Counties of Pike and Adams a distance of about seventeen miles to and into the city of Quincy, and also, all the rights, privileges, franchises, appurtenances, embankments, bridges, turnouts, switches, sidetracks, yards, structures, water tanks, shops, engine houses, depots, turntables, engines, cars and other rolling stock, machinery, tools, lots, lands, buildings, offices and all other things, real and personal, now owned or used, or that may be hereafter owned or used by the Company in connection with the lines of railroad herein and hereby granted to the Trustee in both said states of Iowa and Illinois; also twenty thousand (20,000) shares of the capital stock of the Des Moines and St. Louis Railroad Company, of the par value of one hundred (\$100) dollars each; also five hundred (500) shares of the Capital stock of the Des Moines Union Railway Company, of the par value of one hundred (\$100) dollars each; also all the capital stock of the Hannibal and Quincy Railroad Company that may be subscribed for or issued; also all the capital stock of the Moulton, Albia and Des Moines Railroad Company that may be subscribed for or issued; and also all the leasehold rights and privileges of the Company to the use and enjoyment of the tracks, stations and terminal properties of the Des Moines Union Railway Company in or near said City of Des Moines, including also the rights and interests of the Company in and to a certain terminal contract, dated the 31st day of July, 1897, and made by and between the Des Moines Union Railway Company, the Company and the Des Moines Northern and Western and Western Railroad Company, and in and to another contract, dated the 10th day of May, 1889, and made by and between the Des Moines Union Railway Company, the Des Moines and St. Louis Railway Company, the Des Moines and Northwest-

ern Railway Company, and the St. Louis, Des Moines and Northern Railway Company."

A. Mr. Guernsey, if you will want it, I will read it.

Q. I don't want you to read it; I will have him copy it.

A. I suppose that description is correct.

Q. Now, Colonel, I wish you would look at a telegram to F. M. Hubbell, of March 10, 1899, which is as follows:

"The Western Union Telegraph Company.

3/10/99

76 CH. KT. 53 dh.

St. Louis Mo 10th—99

F. M. Hubbell,

Des Moines, Iowa.

If I send you written consent of Des Moines Union Railway Company and of Des Moines Northern and Western to Execution of Mortgage by Wabash Company to continental trust Company of its stock in Des Moines Union and the terminal contracts along with the Des Moines & St. Louis railroad will you sign such consent and return to me?

WELLS H. BLODGETT.

1259 PM"

and state whether that is a telegram you sent to Mr. Hubbell with reference to this mortgage?

A. I haven't any doubt, Mr. Guernsey that I sent Mr. Hubbell such a telegram, it has every appearance of being genuine.

Q. Now, this letter that I now hand you is a letter written by you to Mr. Hubbell, with reference to this same matter, under date of March 11, 1899, the letter being as follows:

"The Wabash Railroad Company
General Solicitor's Office.

Wells H. Blodgett, Gen'l Solicitor.

St. Louis March 11" 1899.

F. M. Hubbell, Esq.,
Des Moines, Iowa.

Dear Sir:

I am much obliged for your dispatch of yesterday, saying if I would send documents you would attend to getting formal consent of Des Moines Union Ry Co to our mortgage of contract and stock to Continental Trust Company.

I now send you papers as follows: 1st, the proxies of Mr. Ramsey and Mr. Magee to vote at meeting of Board Des Moines Union Ry Co.

2nd, Resolution of Board of Des Moines Union Ry Co authorizing President to execute consent of Company to the assignment.

3rd. The Written Consent of Des Moines Union Ry Co to the assignment of the contract and shares of stock.

The form of the mortgage is such as to make these papers necessary. After you have signed we will take the matter up with President of Des Moines Northern & Western Company at Chicago.

We are anxious to perfect these details as soon as practicable and will greatly appreciate your early attention to matter.

With kindest personal regards I remain,
Yours very truly,

WELLS H. BLODGETT."

A. Yes, sir, that is my letter; I wrote it to Mr. Hubbell.

Q. And in relation to this same matter?

A. It relates to the execution of the mortgage to the Continental Trust Company.

Q. The letter which I now hand you, dated March 20, 1899, is another letter written by you to Mr. Hubbell, referring to the same matter, and is as follows:

"The Wabash Railroad Company
General Solicitor's Office.

Wells H. Blodgett, Gen'l Solicitor.

St. Louis, Mar. 20, 1899.

F. M. Hubbell, Esq.,
Des Moines, Iowa.

Dear Sir:

I wrote you Saturday that I had prepared and sent to Mr. Ashley a quit claim deed from the Wabash Railroad Company to Des Moines Union Railway Company, for the tract of land in Des Moines acquired from Hoyt Sherman. I now write to say there is not the least danger that our new mortgage will cast a cloud on your title to that tract. The mortgage only conveys to the Trust Company the Des Moines & St. Louis Railroad" as the same now is or may be hereafter constructed or operated in the state of Iowa, commencing at a point in or near the city of Des Moines, where said road connects with the tracks Union Railway Company, and extending from thence in a southerly direction through the counties of Polk, Marion and Monroe, a distance of about 67 miles..... and also all the leasehold rights and privileges of the Wabash Company to the use and enjoyment of the tracks, stations and terminal properties of the Des Moines Union Railway Com-

pany in or near said city of Des Moines, including also the rights and interests of the Wabash Company in and to a certain terminal contract, dated the 31st day of July 1897, and made by and between the Des Moines Union Railway Company, the Wabash Railroad Company and the Des Moines Northern & Western Railroad Company, and in and to another contract dated the 10th day of May, 1889, and made by and between the Des Moines Union Railway Company, the Des Moines & St. Louis Railway Company, the Des Moines & Northwestern Railway Company and the St. Louis Des Moines and Northern Railway Company.

I think it might be well, however, for you to hold the quit claim deed from Mrs. How and her sons until Mr. Ashley has executed and returned the quitclaim deed from the Wabash Company to the Des Moines Union Railway Company, and if, in the mean time, the new Wabash mortgage is placed on record, and you and Mr. Cummins think it would be better not to record the deed I sent you from Mrs. How and her sons to the Wabash, and afterwards record the quit claim deed from the Wabash to your Company, I will then take the matter up with Mrs. How and her sons, and endeavor to have them execute the new deed directly to your company, without passing the title through the Wabash Company. It is rather a delicate matter, however, and I would rather not ask them to execute a new conveyance without it seems really necessary to do so. It will not be any trouble to secure a new conveyance from Mrs. How and one of the sons, but the other son has very queer notions about such things. He refuses to accept any portion of his father's estate, and it is quite difficult to get him to sign any paper which seems to imply that he has any interest, by inheritance or otherwise, in anything that belonged to his father. This latter information I give to you privately, so that you may know my reasons for preferring to work the matter out without obtaining from him any further conveyance.

Very truly yours,

WELLS H. BLODGETT."

A. Yes, I wrote that letter.

Q. You also wrote the letter to Mr. Hubbell of March 23, 1899, which I now hand you and which is as follows:

"The Wabash Railroad Company
General Solicitor's Office.

Wells H. Blodgett, Gen'l Solicitor.

St. Louis, March 23, 1899.

F. M. Hubbell, Esq.,
Des Moines, Iowa.

Dear Sir:

I am in receipt of yours of yesterday concerning quit claim deed from Wabash Railroad Co. to Des Moines Union Ry. Co., for tract of land in Des Moines conveyed by Hoyt Sherman to James F. How Trustee.

I herewith enclose same and request that you put same on record at once. I do not, as I have already written, think the new Wabash mortgage would cloud the title of the Terminal Company, but to save all questions on that ground I have asked Mr. Cummins to hold the mortgage until your quit claim deed is recorded. As soon as that is done please inform Mr. Cummins and oblige

Yours very truly,

WELLS H. BLODGETT."

A. Yes, I wrote that letter.

Q. Now, Colonel, to this defendants exhibit "4-a" the lead pencil writing below the typewriting is in your hand writing, is it?

A. Yes, that is in my hand writing. Don't you want to read that separate from the letter?

Q. I will put that in the record. Now, this defendants exhibit "4" is a fair copy of the draft of defendants exhibit "4-a", is it?

A. It is the executed contract of O. D. Ashley, Secretary of the Purchasing Committee of the preceding paper paper marked defendants exhibit "4-a".

Q. "4-a" is a rough draft of that exhibit "4"?

A. Yes; No. 4 is the executed instrument.

Q. And this defendants exhibit No. "3" is apparently a part of the same transaction?

A. I have no knowledge of this, but that is Mr. Ashley's signature.

Q. You will notice these are dated the same day and refer to the same matter, on the same kind of paper. What do you say whether the are a part of the same transaction?

A. I would say they were a part of the same transaction; that is my judgment.

Q. And that you were present; you would say that too, wouldn't you?

A. Of course, I must have been present at the time of the first draft; but I will not say that I was present at the time Mr. Ashley executed the subsequent papers.

Q. Now, the statement in your hand writing is "The said Purchasing Committee hereby guarantee the approval by the Des Moines and St. Louis Railroad Company of the transfer of said stock to said Hubbell within sixty days."

Is that the approval by the Des Moines and St. Louis Railroad Company that is referred to in the bill, when you charge that it was fraudulently obtained by Mr. Hubbell?

A. Well, I don't know about that. You don't want me to say here as a witness that Mr. Hubbell has done anything that was fraudulent?

Q. Not unless you say you were fraudulent.

Do you know of any approval of that transfer of the Des Moines and St. Louis Railroad Company, except the one that was made pursuant to this contract?

A. Let me see how much this covers: Sixty-seven bonds of one thousand dollars each and $\frac{1}{8}$ of the capital stock of said Des Moines Union Railway Company. I might say what is in pencil on that sheet of paper I wrote.

Q. I asked you whether you knew of any other approval of this transfer of this stock except the one had under this contract? A. You mean by the Purchasing Committee?

Q. No, by the Des Moines & St. Louis Railroad Company; I understand your bill alleges we fraudulently caused that to be approved?

Objected to because it assumes a thing which is not in evidence.

A. I wouldn't say there was no other, but I would say that I recall no other.

Q. Now, refreshing your recollection of these contracts, what do you say, as to whether prior to April 8, 1890, you knew that some amendments at least to the articles of incorporation of the Des Moines Union Railway Company were contemplated by your clients, that is, the Wabash interests, I mean?

A. I wouldn't know there was anything contemplated in the way of amending the articles of incorporation. You see, that in the contract of May 10, 1889, you know there was a limitation on the power to transfer stock, and I would say that was added for that purpose. Is that 1890?

Q. This is 1890, February 1890.

A. Well, at that time, it would have been necessary under the contract of 1889 to have the consent, as I recollect the contract of 1889, but I don't think there is anything of that

kind in the original articles of incorporation; I don't recall anything.

Q. You haven't overlooked this provision in this contract of February 11, 1890: That the purchasing committee will consent to such changes of said articles of incorporation as will permit one director of said company to be elected by any person or corporation holding 1/8 of the stock in said Des Moines Union Railway Company?

A. You know I had nothing to do with that contract of February 1890; that must have been executed in New York, not in St. Louis, because I never saw that. I never knew of that agreement on the part of the purchasing committee.

Q. Don't you see when you look at those two contracts, of February 11, 1890, one of them drawn in accordance with the draft corrected by you, apparently written on the same kind of paper; they bear the same date, relate to the same matter, and a part of the same transaction, and having that in mind will you say affirmatively, having drafted one of them, you never saw the other part of this transaction?

A. I will state positively to the best of my recollection, I had no knowledge of that arrangement by which there was to be a change in the manner of nominating or electing directors; that I learned from Mr. Hubbell, I think, himself. Now, that is something I didn't know anything about, the arrangement on the part of the Purchasing Committee to consent to such change in said articles of incorporation as would permit one director to be elected by the holder of 1/8 of the stock in said Des Moines Union Railway Company.

Q. That is, you don't remember, you mean?

A. No, I don't remember.

Q. You didn't remember the other contract unless you saw the hand writing there?

A. No, but the matter of consenting to the change suggested; I would have remembered that, I think.

Q. And Colonel, a while ago, you didn't remember you had anything to do with the purchase of this stock and testified you didn't; isn't that so; that you had nothing to do with those sales of stock to Mr. Hubbell; don't you remember telling us that?

A. No, I don't remember that.

Q. You didn't remember this contract of February 11, 1890, until I showed you your own hand writing, did you?

A. No, I didn't. But if the change in regard to the right of nominating a director had ever been discussed with me, I don't recollect it.

Q. That is what I supposed you meant.

A. Yes.

Witness Excused.

STIPULATION OF COUNSEL RESPECTING COMPLAINANTS EXHIBITS.

In the Circuit Court of the United States, for the Southern District of Iowa, Central Division.

The Chicago, Milwaukee and St. Paul Railway Company, and
The Wabash Railroad Company, Plaintiffs,

vs.

The Des Moines Union Railway Company, Frederick M. Hubbell, Frederick C. Hubbell, and F. M. Hubbell & Son,
Defendants.

Stipulation of Counsel Respecting the Admission of Copies of
Certain Documentary Evidence on the Part of the
Plaintiffs.

It is hereby stipulated and agreed by and between counsel for the plaintiffs and defendants in the above entitled cause, that copies of the contracts, resolutions, records, deeds, mortgages and documents, list of which is hereto attached, may be considered as offered and admitted in evidence in said cause on the part of the plaintiffs, subject, however, to all and every objection thereto, on the part of the defendants, that might be made or urged against the originals. It being the intention that said copies shall be given the same effect as evidence, as would be given to the originals of said several contracts, resolutions, deeds, mortgages and documents.

The list of said contracts and documents, copies of which are above mentioned and referred to, is hereto attached, marked "A".

Said copies shall be designated as "Plaintiffs' Exhibits", and shall be numbered consecutively from No. one to No. Seventy-nine, inclusive, each of said Exhibits being identified by the initials of counsel for the respective parties.

J. C. COOK, E. R. MASON,
WELLS H. BLODGETT,
Attorneys for Plaintiffs.

N. T. GUERNSEY,
Attorney for Defendants.

The List and Copies of Contracts, Resolutions, Records, Deeds, Mortgages and Documents, Mentioned and Referred to in the above Stipulation of Counsel, Hereto Attached, and marked "A" is as follows:

Plaintiffs' Exhibit No. 1.

Copy of agreement entered into December 8, 1880, between Jefferson S. Polk, James S. Clarkson, Frederick M. Hubbard, and John S. Runnels, joint parties of the first part, and the Wabash, St. Louis and Pacific Railway Company, party of the second part.

Plaintiffs' Exhibit No. 2.

Copy of agreement entered into December 8, 1880, between the Des Moines Northwestern Railway Company, the Narrow Gauge Construction Company, and the Wabash, St. Louis and Pacific Railway Company.

Plaintiffs' Exhibit No. 3.

Copy of articles of incorporation of the Des Moines & St. Louis Railroad Company, dated December 15, 1880.

Plaintiffs' Exhibit No. 4.

Copy of contract entered into January 2, 1882, between the Des Moines & St. Louis Railroad Company, the Des Moines Northwestern Ry. Co., the St. Louis, Des Moines & Northern Ry. Co., G. M. Dodge, James F. How, and James S. How, trustee. (Exhibit A. to Bill of Complaint.)

Plaintiffs' Exhibit No. 5.

Copy of proceedings of Board of Directors Des Moines Northwestern Ry. Co. at meeting held December 9, 1884.

Plaintiffs' Exhibit No. 5½.

Copy of original articles of incorporation of Des Moines Union Railway Co. adopted December 10, 1884.

Plaintiffs' Exhibit No. 6.

Copy of proceedings had at first meeting of incorporators Des Moines Union Railway Company, December 10, 1884, together with copy of original articles of incorporation.

Plaintiffs' Exhibit No. 7.

Copy of proceedings had at meeting of stockholders St. Louis, Des Moines & Northern Ry. Co. held January 1, 1885.

Plaintiffs' Exhibit No. 8.

Copy of proceedings had at meeting of stockholders Des Moines Northwestern Ry. Co. held January 1, 1885.

Plaintiffs' Exhibit No. 9.

Copy of proceedings had at meeting of stockholders Des Moines and St. Louis Railroad Company, held January 1, 1885.

Plaintiffs' Exhibit No. 10.

Copy of proceedings had at meeting of the board of directors Des Moines Union Railway Company, held January 1, 1885. ("Exhibit C" to Bill of Complaint.)

Plaintiffs' Exhibit No. 11.

Copy of proceedings had at meeting of board of directors St. Louis, Des Moines & Northern Ry. Co. held November 5, 1887. ("Exhibit E" to Bill of Complaint.)

Plaintiffs' Exhibit No. 12.

Copy of proceedings had at meeting of board of directors, Des Moines and St. Louis Railroad Company, held November 8, 1887.

Plaintiffs' Exhibit No. 13.

Copy of notice delivered November 8, 1887 by the Des Moines and St. Louis Railroad Company to the Des Moines Union Railway Company. ("Exhibit I" to Bill of Complaint.)

Plaintiffs' Exhibit No. 14.

Copy of notice delivered November 8, 1887, by the St. Louis, Des Moines & Northern Ry. Co. to the Des Moines Union Railway Company. ("Exhibit J" to Bill of Complaint.)

Plaintiffs' Exhibit No. 15.

Copy of notice delivered November 8, 1887 by the Des Moines Northwestern Ry. Co. to the Des Moines Union Ry. Co.

Plaintiffs' Exhibit No. 16.

Copy of ordinance, City of Des Moines, granting right over certain streets, alleys, etc. to the Des Moines & St. Louis Railroad Company, dated March 22, 1881.

Plaintiffs' Exhibit No. 17.

Copy of deed from James F. How to the Des Moines Union Railway Company, dated November 19, 1887. ("Exhibit L" to Bill of Complaint.)

Plaintiffs' Exhibit No. 18.

Copy of deed executed by James F. How to Des Moines Union Ry. Co. dated December 10, 1887. ("Exhibit M" to Bill of Complaint)

Plaintiffs' Exhibit No. 19.

Copy of deed executed by James F. How to Des Moines Union Ry. Co. dated April 28, 1888. ("Exhibit N" to Bill of Complaint.)

Plaintiffs' Exhibit No. 20.

Copy of deed from G. M. Dodge to the Des Moines Union Railway Company dated November 7, 1887. ("Exhibit O" to Bill of Complaint.)

Plaintiffs' Exhibit No. 21.

Copy of deed from St. Louis, Des Moines & Northern Ry. Co., to the Des Moines Union Railway Company, dated November 7, 1887.

Plaintiffs' Exhibit No. 22.

Copy of deed from Des Moines and St. Louis Railroad Company to the Des Moines Union Railway Company, dated February 21, 1888.

Plaintiffs' Exhibit No. 23.

Copy of deed of trust or mortgage executed by the Des Moines Union Railway Company to the Central Trust Company of New York, dated November 1, 1887, to secure bonds of the Des Moines Union Railway Company.

Plaintiffs' Exhibit No. 24.

Copy of resolutions of stockholders Des Moines & Northwestern Ry. Co. adopted January 2, 1890, ratifying execution of mortgage of Des Moines Union Railway Company to Central Trust Company of New York.

Plaintiffs' Exhibit No. 25.

Copy of resolutions adopted at a meeting of stockholders Des Moines & St. Louis Railroad Company, January 3, 1890, ratifying execution of mortgage by Des Moines Union Railway Company to Central Trust Company of New York.

Plaintiffs' Exhibit No. 26.

Copy of resolutions of stockholders Des Moines Union Railway Company, adopted March 31, 1888, authorizing the execution of contract between Des Moines Northwestern Ry. Co.

the St. Louis, Des Moines & Northern Ry. Co., the Des Moines and St. Louis Railroad Company, with Des Moines Union Railway Company, (being contract of May 10, 1889.)

Plaintiffs' Exhibit No. 27.

Copy of contract entered into May 10, 1889, between the Des Moines Union Railway Company, the Des Moines & St. Louis Railroad Company, the St. Louis, Des Moines & Northern Ry. Co., and the Des Moines and Northwestern Ry. Co.

Plaintiffs' Exhibit No. 28.

Copy of record Des Moines Union Railway Company, showing proceedings had at meeting of stockholders, April 8th, 1890.

Plaintiffs' Exhibit No. 29.

Copy of resolutions adopted by board of directors Des Moines Union Railway Company, February 11th, 1891, respecting surplus earnings.

Plaintiffs' Exhibit No. 30.

Copy of resolutions adopted by board of directors Des Moines Union Railway Company, on the 7th day of January, 1892, respecting disposition to be made of surplus earnings.

Plaintiffs' Exhibit No. 31.

Copy of annual report of Des Moines Union Railway Company, made to the Executive Council of the state of Iowa, for the year ending December 31st, 1888.

Plaintiffs' Exhibit No. 32.

Copy of annual report of Des Moines Union Railway Company, made to the Executive Council of the state of Iowa, for the year ending December 31st, 1889.

Plaintiffs' Exhibit No. 33.

Copy of annual report of Des Moines Union Railway Company, made to the Executive Council of the state of Iowa, for the year ending December 31st, 1890.

Plaintiffs' Exhibit No. 34.

Copy of annual report of the Des Moines Union Railway Company, made to the Executive Council of the state of Iowa, for the year ending January 1st, 1892.

Plaintiffs' Exhibit No. 35.

Copy of annual report of the Des Moines Union Railway Company, made to the Executive Council of the state of Iowa, for the year ending January 1st, 1893.

Plaintiffs' Exhibit No. 36.

Copy of annual report of Des Moines Union Railway Company, made to the Executive Council of the state of Iowa, for the year ending January 1st, 1894.

Plaintiffs' Exhibit No. 37.

Copy of contract entered into July 31st, 1897, between the Des Moines Union Railway Company, the Wabash Railroad Company, and the Des Moines, Northern & Western Railroad Company, respecting contract of May 10th, 1889.

Plaintiffs' Exhibit No. 38.

Copy of mortgage executed December 1st, 1881, by Des Moines & St. Louis Railroad Company to Central Trust Company of New York, and James Cheney.

Plaintiffs' Exhibit No. 39.

Copy of release executed November 13th, 1895, by Central Trust Company of New York, and James Cheney, of mortgage Des Moines & St. Louis Railroad Company to them, dated December 1st, 1881.

Plaintiffs' Exhibit No. 40.

Copy of lease executed March 1st, 1882, by Des Moines and St. Louis Railroad Company to Wabash, St. Louis and Pacific Ry. Co.

Plaintiffs' Exhibit No. 41.

Copy of resolutions of board of directors Des Moines and St. Louis Railroad Company, consenting to cancellation of lease dated March 1st, 1882, to Wabash, St. Louis and Pacific Ry. Co.

Plaintiffs' Exhibit No. 42.

Copy of resolutions of stockholders Des Moines and St. Louis Railroad Company, adopted February 3rd, 1899, authorizing conveyance of railroad property and franchises of Company to the Wabash Railroad Company.

Plaintiffs' Exhibit No. 43.

Copy of resolutions of board of directors Des Moines and St. Louis Railroad Company, adopted March 16th, 1899, authorizing conveyance of railroad property and franchises of Company to the Wabash Railroad Company.

Plaintiffs' Exhibit No. 44.

Copy of deed executed January 1st, 1899, by Des Moines and St. Louis Railroad Company to Wabash Railroad Company.

Plaintiffs' Exhibit No. 45.

Copy of deed executed April 25th, 1888, by Wabash, St. Louis and Pacific Railway Company to the Wabash Purchasing Committee.

Plaintiffs' Exhibit No. 46.

Copy of deed executed August 18th, 1898, by Wabash Purchasing Committee to Wabash Railroad Company.

Plaintiffs' Exhibit No. 47.

Copy of mortgage executed August 1, 1881, by the St. Louis, Des Moines & Northern Railway Company to the Mercantile Trust Company, Trustee, and of a supplemental mortgage made by the said grantor to the said trustee on the 2nd day of October, 1889.

Plaintiffs' Exhibit No. 48.

Copy of bill of complaint filed in the United States Circuit Court for the Southern District of Iowa, Central Division, October 7, 1889, by said Mercantile Trust Company, Trustee, against said St. Louis, Des Moines & Northern Railway Company.

Plaintiffs' Exhibit No. 49.

Copy of final decree entered in said cause October 15, 1889.

Plaintiffs' Exhibit No. 50.

Copy of report of the Master's sale under the decree Exhibit 50, filed November 28, 1889.

Plaintiffs' Exhibit No. 51.

Copy of Master's deed made under said sale by Geo. F. Henry, Commissioners, to Solon Humphreys and J. T. Granger on Nov. 22, 1889.

Plaintiffs' Exhibit No. 52.

Copy of order confirming said sale entered November 23, 1889.

Plaintiffs' Exhibit No. 53.

Copy of articles of incorporation of the Des Moines & Northern Railway Company.

Plaintiffs' Exhibit No. 54.

Copy of deed by Solon Humphreys and Ellen Humphreys his wife and J. T. Granger and Carrie H. Granger, his wife, to the Des Moines & Northern Railway Company, dated November 23, 1889.

Plaintiffs' Exhibit No. 55.

Copy of resolution adopted by the board of directors of the St. Louis, Des Moines & Northern Railway Company dated January 23, 1882, relative to execution and delivery of a conveyance to the Des Moines, Northwestern Railway Company of all its right, title and interest to its branch road from Clive to Waukee, and one-half of its road Clive Station to Farnham street in the city of Des Moines, and an agreement as to the operation of said property.

Plaintiffs' Exhibit No. 56.

Copy of record of board of directors of Des Moines Northwestern Railway Company at a meeting of January 23, 1882, relative to the matter last above referred to.

Plaintiffs' Exhibit No. 57.

Copy of contract between St. Louis, Des Moines & Northern Railway Company and Des Moines Northwestern Railway Company, dated January 23, 1882, as to matter last above referred to.

Plaintiffs' Exhibit No. 58.

Copy of mortgage executed by the Des Moines Northwestern Railway Company to the Central Trust Company and James Cheney, trustees, February 28, 1881.

Plaintiffs' Exhibit No. 59.

Copy of foreclosure of said mortgage in the United States Circuit Court in and for the Southern District of Iowa, Central Division, entered on the 11th day of November, 1887.

Plaintiffs' Exhibit No. 60.

Copy of order of the said court entered June 2, 1888, confirming and approving deed of Geo. F. Henry, Commissioner, to Jefferson S. Polk and F. M. Hubbell, said order containing a copy of said Master's deed, dated May 19, 1888.

Plaintiffs' Exhibit No. 61.

Copy of articles of incorporation of the Des Moines and Northwestern Railway Company adopted October 3, 1887.

Plaintiffs' Exhibit No. 62.

Copy of deed from Jefferson S. Polk and F. M. Hubbell and their wives to the said Des Moines and Northwestern Railway Company dated December 21, 1887.

Plaintiffs' Exhibit No. 63.

Copy of record of stockholders' meeting of Des Moines and Northwestern Railway Company held August 17, 1891, relative to consolidation.

Plaintiffs' Exhibit No. 64.

Articles of consolidation and incorporation of the Des Moines Northern & Western Railway Company, December 14, 1891.

Plaintiffs' Exhibit No. 65.

Copy of mortgage executed by the Des Moines Northern & Western Railway Company to Metropolitan Trust Company of New York as trustee, dated December 15, 1891.

Plaintiffs' Exhibit No. 66.

Copy of decree of foreclosure of the said mortgage entered by the Circuit Court of the United States for the Southern District of Iowa, Central Division, Nov. 7, 1894.

Plaintiffs' Exhibit No. 67.

Copy of report of sale by Geo. F. Henry, Commissioner, under said decree dated Dec. 18, 1894.

Plaintiffs' Exhibit No. 68.

Copy of order confirming the said report of sale entered February 7, 1895.

Plaintiffs' Exhibit No. 69.

Copy of deed from Geo. F. Henry, Commissioner, to G. M. Dodge, F. M. Hubbell and F. C. Hubbell, Purchasing Committee, dated February 15, 1895.

Plaintiffs' Exhibit No. 70.

Copy of articles of incorporation of the Des Moines, Northern & Western Railroad Company dated January 1, 1895.

Plaintiffs' Exhibit No. 71.

Copy of deed from G. M. Dodge, F. M. Hubbell and F. C. Hubbell, Purchasing Committee, to Des Moines, Northern & Western Railroad Company, dated February 23, 1895.

Plaintiffs' Exhibit No. 72.

Copy of the record of a meeting of the stockholders of the Des Moines, Northern & Western Railroad Company, held April 24, 1899.

Plaintiffs' Exhibit No. 73.

Copy of resolution by directors of Des Moines Northern & Western Railroad Company, dated April 24, 1899.

Plaintiffs' Exhibit No. 74.

Copy of deed from the Des Moines, Northern & Western Railroad Company to the Chicago, Milwaukee & St. Paul Railway Company, dated May 1, 1899.

Plaintiffs' Exhibit No. 75.

Copy of what purports to be a record of the stockholders' meeting of the Des Moines, Northern & Western Railroad Company of date June 12, 1907.

Plaintiffs' Exhibit No. 76.

Copy of what purports to be deed from Des Moines Northern & Western Railroad Company to Chicago, Milwaukee & St. Paul Railway Company dated June 19, 1907.

Plaintiffs' Exhibit No. 77.

Copy of trust conveyance and convention from F. M. Hubbell and wife to Frederick M. Hubbell, et al., trustees of the Frederick M. Hubbell Estate dated December 31, 1903.

Plaintiffs' Exhibit No. 78.

Copy of deed executed October 16, 1886, from the Mercantile Trust Company of New York as trustee to James F. Joy, Ossian D. Ashby, Thomah H. Hubbard and Edgar T. Welles.

Plaintiffs' Exhibit No. 79.

Tabulation of stock certificates issued by Des Moines Union Railway Company.

PLAINTIFFS EXHIBITS

Referred to in Stipulation (ante, page 159) and, Numbered from No. 1 to No. 79 Inclusive, are as follows:

Pliffs. Exhibit No. 1.

Contract of December 8th 1880 between Wabash St. Louis & Pacific Ry. Co., J. S. Polk, James S. Clarkson, Frederick M. Hubbell and John S. Runnells.

This Memorandum of an agreement, made at the City of New York, this eight day of December, A. D. 1880, by and between Jefferson S. Polk, James S. Clarkson, Frederick M. Hubbell and John S. Runnells, joint parties of the first part, and the Wabash, St. Louis and Pacific Railway Company, party of the second part, witnesseth:

The first parties above named are interested in a railroad extending northwesterly from Waukee, Dallas County, Iowa, and are desirous of obtaining for the said railroad a connection with the railroad of the second party hereto. The second party owns and controls a system of railroads, one of which extends as far as Albia, in the State of Iowa, and is desirous of extending said railroad to a connection at at Des Moines, Iowa, with the railroad of the first parties above-mentioned. Thereupon it is mutually covenanted between the parties above named as follows:

First. The first parties above named will immediately proceed to incorporate themselves under the laws of Iowa a railroad corporation, to be known as the "Des Moines & St. Louis Railroad Company," with a capital stock of two millions of dollars, and authorized to construct a railroad from Des Moines, Iowa, to Albia, in said State. They will give their time and personal attention as directors and officers of said Company, so far as the same may be necessary, to the location and economical construction of said railroad, all of which location and construction shall be subject to the approval of second party hereto. They will personally exert themselves to procure subsidies, to be voted along the line, and also to procure donations of land for stations and right of way, and other benefits, in aid of the construction of the railroad of said Company. They shall jointly receive as compensation for their services as officers and agents of said company, and in procuring subsidies and other aid from the time of the execution of this contract to the time of the completion of said railroad, the sum of ten thousand dollars in money, and the further sum of 5% of the amount of all of said subsidies which shall be actually paid, and five per cent, of the value of all lands donated for right of way or station purposes, and 5% of the value of all other aid to the construction of the railroad of said Company which may be expressly accepted by the second party hereto. In the event that more ground is donated in consideration of the location of a station at any point than is required upon a liberal construction for those purposes, the surplus shall belong absolutely to the first parties hereto. The value of property donated for right of way shall be estimated at four hundred dollars per mile. The said sum of ten thousand dollars shall be paid on the completion of the first five miles of said railroad as hereinafter provided, and the commission of five per cent on the completion of said railroad.

It is expressly understood that the expenses of the parties above named, as officers and directors of said company, and while personally engaged in procuring subsidies or right of

way, and their office and clerical expenses, and the legal expenses of said company for condemnation and other proceedings, shall be defrayed from funds of said company and not at their personal cost.

Second. The first parties above named will subscribe to the capital stock of said company such amount as shall be necessary to qualify themselves as directors thereof, and no more, and will receive no other subscription to the capital stock of said company except the following:

They will accept a subscription to the capital stock of said company, to be made by such person or persons as shall be designated by the second party hereto, amounting to the entire capital stock of said company, except that which shall have been subscribed by themselves as above, and which subscription shall be conditioned that the subscriber shall, with all reasonable dispatch, locate, provide right of way and grounds for, construct, complete and reasonably equip the railroad aforesaid, from Des Moines, Iowa, to a connection with the railroad of the second party hereto, at Albia, as above mentioned, and shall further pay all the compensation and expenses of the first parties hereto, as in this agreement defined, all of which location and construction shall, by the subscriber aforesaid, be done to the approval of the second party hereto, and shall be further conditioned, that in payment for such location, right of way, construction and equipment, the subscriber shall receive the entire amount of capital stock, by him subscribed as above, and in addition thereto, for each mile of said railroad, fifteen thousand dollars in bonds of the second party hereto, of the issue secured by its General Mortgage, and further secured by Special Mortgage on the railroad and equipments of said company, and all appurtenances thereto. As fast as each section of five miles of said railroad is completed, there shall be issued to the subscriber, the entire amount of fifteen thousand dollars per mile, of said bonds, and one hundred and twenty-five thousand dollars of said capital stock, the remainder of said capital stock to be issued and delivered when such contract of subscription is complete.

In addition to the payment above set forth, there shall be transferred to said subscriber, by said company, all sums of money or monied obligations which said company may receive in consideration of the construction of said railroad, from persons or private and municipal corporations; and so much of the capital stock of said company as the laws of Iowa may require said company to transfer to persons or corporations, in consideration of such local aid, shall, by said company, be so transferred and deducted from the amount of said capital stock, otherwise payable to the subscriber aforesaid.

If from the death or disability of either of said parties of the first part, or from other cause, the second party hereto shall deem that its interests require the surrender by said first parties, or any of them, of the amount of stock held by said first parties or any of them, in order to qualify themselves as directors of said company, then, upon the demand of said second party, either or all of said first parties shall transfer to said second party, the stock by them individually held.

In the event of the retirement of any or all of said first parties by this means, upon the demand of the second party hereto, such retirement shall not affect the interest of such person or persons in the sum of ten thousand dollars above mentioned, or in the commission of 5%, so far as the latter relates to the value of such aid, as shall have been voted or secured from other sources prior to such demand by the second party hereto.

The first parties above named will, as officers and directors of said company, upon the demand of the second party hereto, execute and deliver to said second party a lease in perpetuity of the said railroad and equipment, conditioned that the second party hereto, as lessee, shall, during its tenure under said lease, maintain said railroad and equipment in as good order as received, and shall operate the same, as required by law; shall pay all taxes and assessments on the same; shall fully protect the interest accruing upon the bond above mentioned, and shall pay annually such further rental as a due proportion of the earnings of said railroad shall afford.

And in consideration of the premises, the second party above named will provide persons who shall make the subscription above set forth, and fully perform the same. And the said second party will also demand and accept a lease of the said railroad and equipment, upon the terms above defined. The second party further agrees, that it will furnish to the company to be organized as above, the bonds of the second party secured by its General Mortgage, in such amounts and at such times as shall be required for payment for construction and equipment of the railroad of said company, under the subscription above mentioned.

It is, moreover, expressly understood by said second party that said first parties expect to secure to themselves personal advantage, from the location of stations on the line of said railroad, adjacent to lands, mines and quarries, which said first parties shall purchase, lease, or otherwise acquire or become interested in.

In Witness Whereof, the first parties above named, have hereunto set their hands and seals, and the second party here-

to, has caused its signature and seal to be, by its President and Secretary, affixed hereto, the day and year above written.

**THE WABASH, ST. LOUIS & PACIFIC
RAILWAY COMPANY,**

By Solon Humphreys,
President.

Attest:

Jas. F. How,
Secretary,

(Seal)

JEFFERSON S. POLK,
JAMES S. CLARKSON,
FREDERICK M. HUBBELL,
JOHN S. RUSSELLS.

Plffs. Exhibit No. 2.

Contract of December 8th, 1880, between the Wabash St. Louis & Pacific Ry. Co. and Des Moines Northwestern Railway Co. and Narrow Gauge Construction Co.

This memorandum of an agreement, made and entered into by and between the Des Moines Northwestern Railway Company, hereinafter for convenience styled the Des Moines Company, of the one part, the Narrow Gauge Railway Construction Company, hereinafter called the Construction Company, of the second part, and the Wabash, St. Louis & Pacific Railway Company, hereinafter called the Wabash Company, of the third part, witnesseth:

Whereas, the Des Moines Company has heretofore constructed its road from Waukee, a point on the Des Moines & Fort Dodge Railroad, about 15 miles west of Des Moines, to Panora, in Guthrie County, Iowa, and thereupon suspended further construction of said railroad, for want of funds.

Whereas, said company desires to raise funds to further extend its railroad, pay off its floating debt, and fund its bonded debt at a lower rate of interest and on longer time.

Whereas, so much of its said railroad as is now completed was built under a contract with the Construction Company, whereby the Des Moines Company agreed to issue to the Construction Company \$7,500. per mile of its capital stock, and \$5,000. per mile of its bonds, bearing 7% interest, and payable in 20 years, secured by mortgage on its road, all of which should be received by said Construction Company in payment for the completion of said contract on its part.

Whereas, said Construction Company has completed its contract with said Des Moines Company, and has received from

said Company the bonds and stock it was entitled to under said contract.

Whereas, said Construction Company and its members, individually, still own and hold said stock and bonds, which stock is all the capital stock of said Des Moines Company, except about \$30,000, issued, and to be issued, for subsidies and conditional subscriptions, and the bonds so held by the members of the Construction Company constitute the entire bonded debt of the Company.

Whereas, said Construction Company and its members own or control the entire floating debt of the said Des Moines Company.

Whereas, said Construction Company and its members desire to put the Des Moines Company in position to raise funds to further extend its road, pay off its floating debt, and fund its outstanding bonds at a lower rate of interest, and to that end are willing to surrender the stock and bonds now held by it and them, and to pay off the floating debt of the Des Moines Company, receiving therefor new stock and bonds of the Des Moines Company hereinafter mentioned, on such terms as may be just and equitable.

And Whereas, the Des Moines Company did on the 18th day of November, 1879, enter into a contract with the Des Moines & Fort Dodge Railroad Company, for the disposition of its business, to which reference is hereby made, and has certain contract relations with the Western Union Telegraph Company.

And Whereas, The Wabash Company is now negotiating for the purchase or lease of the Des Moines & Fort Dodge Road aforesaid.

And Whereas, the Wabash Company has entered into an arrangement with the Des Moines & St. Louis Railroad Company, whereby the Wabash Company is to have a lease in perpetuity of said Des Moines & St. Louis Railroad when completed, which will give the Wabash Road a route to Des Moines.

And Whereas, the Wabash Company desires to obtain the through business arising on the Des Moines Road, and to have said road extended, for the purpose of increasing the business to be derived therefrom.

Now Therefore, in consideration of the premises and to carry out the objects above mentioned, it is agreed and stipulated by and between the several parties hereto:

First. That the Construction Company shall surrender to the Des Moines Company all the stock and bonds of the Des Moines Company held by it or its several members, and the same shall be cancelled and the mortgages given to secure said bonds released of record, and will further cause to be paid, released or discharged the entire floating debt of said Des Moines Company, so that the mortgage hereinafter mentioned shall be the first mortgage on said company's property.

Second. The Construction Company shall further cause all the floating debt of the Des Moines Company to be surrendered or discharged, so that the said railroad shall be free from debt and from all liens, except by way of contract with the Western Union Telegraph Company, and with the Des Moines & Fort Dodge Railway Company, as hereinbefore referred to.

Third. The Construction Company will also, with all reasonable dispatch, locate, provide right of way and grounds for, construct, complete and reasonably equip, an extension of the Des Moines Company's railroad for 30 miles northwesterly from Panora, and such further extensions northwesterly as far as Spirit Lake, or to some point in that vicinity; or to the north line of Iowa, with a branch, if required, to Sioux City, as the Des Moines Company may, hereafter, demand upon the terms and conditions hereinafter set forth. Any demand for extension beyond thirty miles from Panora shall be made within three years from this date.

Fourth. In consideration of the foregoing, the Des Moines Company will pay to the Construction Company for each mile of its railroad now complete, and for each mile which the Construction Company shall hereafter complete, \$7,000, in bonds of the Wabash Company, of the series issued under the general mortgage of that company, and the Des Moines Company shall further execute to the Trustees of said general mortgage a special mortgage, which shall be a first lien to the extent of \$7,000, per mile on the railroad property, equipment and appurtenances of the Des Moines Company, then held or thereafter to be acquired, for the benefit of all holders of bonds issued under said general mortgage; said mortgage shall, however, be so written that no foreclosure shall take place so long as the interest upon an amount equal to \$7,000, per mile in said bonds is paid to said Trustees, according to the tenor and effect of the said bonds.

Fifth. In further consideration of the foregoing, the Des Moines Company will pay to the Construction Company, \$10,500, in the capital stock of the said Des Moines Company for each mile of its railroad now complete, and that may hereafter be completed, and will further pay and transfer to said

Construction Company all subsidies, donations and conditional benefits which said Des Moines Company may receive or secure in aid of the extension of its railroad as above set forth.

Sixth. To enable the Des Moines Company to make payment as above in its capital stock, the Construction Company will immediately subscribe to the Capital Stock of the Des Moines Company an amount equal to \$10,500. for each mile of the said 30 miles immediately to be built, and will make like subscriptions prior to entering on the work of any subsequent extension. Every such subscription shall be payable in the construction and equipment of said railroad as above provided and shall stipulate that the subscriber shall receive proportionate amounts of all the bonds, stock and subsidies above enumerated, as fast as each successive section of five miles shall be complete.

Seventh. To enable the Des Moines Company to procure the bonds of the Wabash Company, above stipulated to be paid, the Construction Company agrees that as fast as the stock of said Des Moines Company or any part thereof, shall be received by it, whether issued on that part of said railroad already complete, or upon any extension thereof, it will divide equally with the Wabash Company such portion of said stock as shall remain after delivering to the parties who shall be entitled to receive stock in consideration of taxes paid or other conditional aid, so much as they are entitled to receive.

The intention and agreement of the Construction Company and the Wabash Company is hereby declared to be that each of said companies shall have an equal voice and interest in the control and earnings of said Des Moines Company, and to that end it is agreed that so much of the stock of the company as shall be issued in consideration of taxes paid or other conditional benefits shall be bought in for account of said Des Moines Company, as fast as practicable, from the earnings of said road or from funds provided by the parties hereto. Said stock, when paid for by the Des Moines Company, shall be immediately cancelled. Pending the purchase of said stock by the Des Moines Company, the Construction Company shall transfer to the Wabash Company an equivalent amount of the Des Moines Company's stock, to be returned as fast as the stock issued in consideration of taxes paid shall be bought in by the Des Moines Company, so that the Wabash Company shall have and control at all times, as exactly as possible, one-half of all outstanding stock of the Des Moines Company. If the Des Moines Company shall fail to take up any of said stock which shall be bought in by individual members of the Construction Company, the Wabash Company shall have the right

to one-half of any stock so purchased, upon paying one-half the cost.

It is further agreed by the Construction Company and the Wabash Company, that the stock of both companies shall be voted for a board of directors, consisting of nine members; four of whom shall be nominated by the Wabash Company, four by the Construction Company, and the remaining one shall be chosen by the eight persons thus selected.

The Des Moines Company on its part agrees:

First. It will immediately execute and deliver to the Wabash Company a lease in perpetuity of its railroad property and appurtenances from time to time as required.

It shall keep full and separate accounts, which shall be open to inspection by the parties hereto, of the earnings of said railroad, and shall apply the same, after paying the expenses of maintenance and operation as above.

First, to the payment of all taxes and assessments on the railroad and property of the said Des Moines Company.

Second, to the payment of interest on the bonds of said Wabash Company, to be issued as above at the rate of \$7,000. for each mile of its railroad now complete, and to be issued at the same rate hereafter as each mile of any extension thereof as the same shall be hereafter completed.

Third, to the payment of dividends upon the capital stock of the said Des Moines Company.

The Wabash Company shall, however, in said lease expressly guarantee that the net earnings of said railroad shall at all times be fully equal to the taxes and assessments on said railroad and property, the necessary renewals of said railroad and equipment and to the payment of interest on said bonds. The amount so applicable to taxes, interest and dividends shall in each year be not less than 30% of the gross earnings of said railroad.

The Wabash Company shall, moreover, in said lease expressly stipulate that upon all through freight originating on the line of the said railroad and upon all through freight coming to said railroad from the railroad of the Wabash Company, and having final destination at some point on the railroad of the Des Moines Company, there shall be allowed to said Des Moines Company, and computed as part of said earnings, a division which shall amount to not less than 25% of the gross amount received for transportation of freight from or to Chicago, Peoria, St. Louis, or other points on the Mississippi River, ac-

according to the destination of such freight. Freight passing to or coming from beyond the points above named shall be treated as if originating at or destined to those points. It shall, however, be expressly stipulated that a higher rate shall be allowed to the Des Moines Company whenever such higher rate is allowed to other local roads at Des Moines or places similarly situated, and in the event of a disagreement on this point between the Wabash Company and the Des Moines Company, or any stockholder thereof, the matter shall be submitted to and determined by arbitrators, as elsewhere provided in the agreement.

The Des Moines Company on its part agrees:

First. It will at once execute and deliver to the Wabash Company a lease of its railroad and property, upon the terms above described.

Second. It will execute a mortgage as above provided for, covering its railroad, equipment, property and incomes, to further secure such of the bonds of the Wabash Company of the series issued under the general mortgage of that company, as shall be delivered to the Des Moines Company to be used in accordance with its covenants, above set forth.

Third. It will accept from the Construction Company a subscription to its capital stock, payable in the construction of an extension of its road for 30 miles northwesterly from the present terminus of its completed road, and will hereafter accept and comply with such further subscriptions as the Construction Company may make, upon the same terms, for the further extension of its railroad within the limits above mentioned, to Sioux City and Spirit Lake.

Fourth. It will at once make further provision for an increase of its board of Directors to nine persons, as above provided for, and will further cause its articles of incorporation to be amended, so that the board of directors of said company shall have express authority to carry out the provisions of this agreement.

The Wabash Company on its part agrees:

First. It will accept a lease of the railroad and property of the Des Moines Company upon the terms above set forth, and will faithfully perform the conditions of said lease on its part to be performed.

Second. It will furnish to the Des Moines Company so many of the bonds issued under the General Mortgage of said Wabash Company as shall from time to time be required for delivering

to said Construction Company, upon compliance by said Construction Company with its covenants, above set forth.

Third. It will repurchase from the Construction Company all or any part of the bonds last above mentioned, at an agreed price of 95% of the par value of said bonds upon that sum, whenever the Construction Company shall not find a purchaser at a price above that sum.

The bonds so offered for purchase shall, however, be presented at the office of the Wabash Company, in the City of New York, and payment shall be made within three days from that date.

If the Wabash Company shall fail so to re-purchase the \$210,000. of said bonds, to be issued on the 30 miles of said railroad now complete, then the Construction Company may declare this agreement void, provided said bonds are presented for repurchase within 60 days from the date of this agreement.

It is further mutually agreed by and between the parties above named, that if certain pending negotiations between the Wabash Company and the Des Moines & Fort Dodge Company shall result in the Wabash Company's acquiring control, by lease or otherwise, of the Des Moines and Fort Dodge Road, then the Des Moines Company shall have the right (upon terms to be fixed by agreement of the parties, otherwise to be settled under the general provisions herein made for arbitration) to extend its line into Des Moines, by laying a third rail upon the Des Moines and Fort Dodge Road.

It is further mutually agreed by and between the parties above named, that if the pending negotiations between the Wabash Company and the Des Moines and Fort Dodge Company shall fail, then the railroad of the Des Moines Company shall be extended to a connection with the railroad of the Des Moines and St. Louis Company, at or near Des Moines, substantially under the provisions of the foregoing agreement, but with such modifications as the greater cost of such extension may require. The Des Moines Company shall in that case have full right of entry into Des Moines, by laying a third rail on the Des Moines and St. Louis Road, and full use of the terminal facilities of that road, upon terms to be settled by agreement between the Des Moines Company and the Wabash Company, or else under the arbitration elsewhere provided for herein.

It is further agreed on the part of the Wabash Company, that if it shall acquire control of the Des Moines & Fort Dodge Road, then the Wabash Company will permit the Des Moines Company to lay down a third rail on the track of the Des

Moines & St. Louis Road, from the terminus of the Fort Dodge Road, in the City of Des Moines, eastwardly far enough to reach such pork houses and other sources of freight as are on the east side of the City of Des Moines, and are reached by the tracks of the Des Moines and St. Louis Road. Payment to be made to the Des Moines and St. Louis road by the Des Moines Company, upon reasonable terms, to be fixed by agreement, or by arbitration, above provided for.

The parties above named do further agree as follows:

First. The entire location and construction of the said extension of the Des Moines Railroad shall be under the supervision and control of the Wabash Company, which shall appoint an engineer to superintend the same.

It is further agreed between the parties hereto, that all matters of difference arising between them, or any of them, under this contract, shall be submitted to arbitration of three persons, one of whom shall be selected by the Wabash Company, one by the Construction Company, or its members, and the two thus selected shall choose a third, and their decision in writing touching all such matters as may be submitted to them in writing shall be final and conclusive between the parties.

In Witness Whereof, the parties above named have caused their respective signatures and seals to be affixed by their presidents, and attested by their secretaries respectively, this eighth day of December, A. D. 1880.

(Seal) THE WABASH, ST. LOUIS & PACIFIC
RAILWAY CO.,
By Solon Humphreys, President.

Attest:
Jas. F. How,
Secretary.

(Seal) THE DES MOINES NORTHWESTERN
RAILWAY CO.,
By J. S. Polk, Prest.

Attest:
J. S. Runnells,
Sec. D. M., N. W. R. Co.

(Seal) THE NARROW GAUGE RAILWAY CON-
STRUCTION COMPANY,
By F. M. Hubbell, Prest.

Attest:
J. S. Runnells,
Sec. N. G., R. Cons. Co.

The undersigned, who are all the stockholders of the Construction Company mentioned in the above contract, hereby assent as such, to said contract.

J. S. POLK,
J. S. CLARKSON,
J. S. RUNNELLS,
F. M. HUBBELL.

December 16, 1880.

Plffs. Exhibit No. 3.

Articles of Incorporation
of the
Des Moines and St. Louis Railroad
Company.

Art. 1. The undersigned their successors and assigns hereby Associate themselves together into a corporation to be known as the Des Moines and St. Louis Railroad Company for the purpose of constructing, owning, and operating or constructing and leasing a railroad from the City of Des Moines in Polk County, Iowa, to a connection with the Wabash, St. Louis and Pacific Railway in the State of Iowa, and such corporation shall possess all the powers conferred by law upon corporations for pecuniary profit.

Art. 2. The capital stock of the corporation shall be 2,000,000. of Dollars which shall be divided into shares of one hundred dollars each, all of which shall be liable to payment at such time and in such manner as the Board of Directors may from time to time determine. The entire capital stock, or any part thereof, may at the discretion of the Board of Directors be issued for the purpose of carrying out the objects of this incorporation and may be paid for in work done or material furnished in the construction of the road.

Art. 3. The principal place of business shall be at Des Moines, Iowa, provided that it shall be at the discretion of the President to call any meeting of the stockholders or of directors at any other place than Des Moines, upon a publication of a notice thereof five days before the date of the proposed meeting in some newspaper published at Des Moines.

Art. 4. The affairs of the company shall be managed by a Board of four directors who shall be elected annually by the stockholders on the first Thursday in January, except as hereinafter provided, each share having one vote. The provisional Board of Directors who shall hold office until the first Thursday in January, A. D. 1882 (when the first meeting of the stockholders for the election of officers shall be held) shall con-

sist of J. S. Polk, J. S. Clarkson, J. S. Runnells and F. M. Hubbell. The directors shall have all the powers usually possessed by directors of similar corporations. They are hereby further authorized for the purpose of enabling them to carry out the objects of this incorporation to execute a mortgage upon the road, franchises and other property of this company to the amount of not less than \$15,000. a mile to secure the bonds of the company or other evidences of indebtedness of a like amount approved by the Board and to issue full paid stock to the amount of not less than \$25,000. a mile, all of which bonds or other evidences of indebtedness and stock together with all subsidies, taxes, gifts and donations which may be obtained to aid in the construction of the road, they are empowered and directed to transfer to such corporation or individual as they may elect for the purpose of securing the construction and operation of the road herein contemplated. They shall be further authorized to execute a lease of the road in perpetuity or otherwise when it shall have been constructed and they are hereby invested with all the powers which could be exercised by the stockholders when the latter are not in session. For the purpose of carrying out the objects of this incorporation a majority of the Board shall constitute a quorum and in the event of the death or resignation of a member, the remaining members may fill the vacancy thus occurring. The directors shall elect from their number a President, Vice-President, Secretary and Treasurer. Meetings of the Board may be held at any time upon the call of the President or in his absence of the Vice President, or any two members of the Board.

Art. 5. The President, Vice-President, Secretary and Treasurer shall constitute an executive committee who shall have power to make contracts binding upon the corporation and shall be intrusted with the immediate management of its affairs. They shall be authorized to act for the company in all matters affecting its interests and their undertakings as such committee shall be valid and binding to the same extent as would those of the full board of directors. They shall have power to act as herein provided at any time and place when and where two or more of them may be together.

Art. 6. The private property of the stockholders shall be exempt from liability for corporate debts and undertakings.

Art. 7. All contracts and certificates of stock shall be signed by the president and countersigned by the Secretary.

Art. 8. The highest amount of indebtedness to which the corporation may at any time subject itself is \$1,300,000.

Art. 9. These articles may be amended by a vote of two-thirds of all the shares of stock subscribed in favor of the pro-

posed amendment upon publication of notice of the meeting at which such amendment shall be proposed thirty days before the date thereof in two papers published at Des Moines. Amendments may also be made without publication of notice, by the unanimous vote of the Board of Directors whenever they shall convene on call of the President or Vice-President.

Art. 10. This corporation shall commence on the 15th day of December, A. D. 1880, and continue 50 years with the right of renewal.

In Witness Whereof we have hereunto set our names this 15th day of December, A. D. 1880.

JAMES S. CLARKSON,
JEFFERSON S. POLK,
F. M. HUBBELL,
JOHN S. RUNNELLS.

State of Iowa,
Polk County—ss.

Before me, a Notary Public, in and for the County and State aforesaid, on this 15th day of December, A. D. 1880, personally appeared J. S. Polk, J. S. Clarkson, J. S. Runnells and F. M. Hubbell to me personally known to be the identical persons who executed the foregoing articles of incorporation, and acknowledged the execution thereof to be their voluntary act and deed for the purposes therein expressed.

Witness my hand and notarial seal the day and year last above mentioned.

(Seal)

C. HUTTENLOCHER,
Notary Public.

Filed for Record Jany. 27th, 1881, at 2:30 o'clock P. M., and recorded in Book 3 Articles of Incorporation page 23, Polk Co., Ia., Records.

J. J. PAYNE, Recorder.

State of Iowa—ss.

Filed for record in office of Secy. of State Feb. 8th, 1881.

J. A. T. HULL,
Secy. of State.

Office of the Des Moines & St. Louis Railroad
Company.

Des Moines, Iowa.

State of Iowa,
Polk County—ss.

I, F. M. Hubbell, Secretary of the Des Moines & St. Louis Railroad Company, do hereby certify that the following among

other proceedings were had by the Board of Directors of the Des Moines & St. Louis Railroad Company at its meeting regularly held on the 3rd day of January, A. D. 1884, to-wit:

"John S. Runnells moved that Article IV of the Articles of Incorporation of this Company be amended by striking out of the first section thereof the word "four" and inserting therein the word "nine" so that said Section of Article IV shall read as follows, to-wit:

"The affairs of the Company shall be managed by a Board of nine directors who shall be elected annually by the stockholders on the first Thursday in January except as hereinafter provided, each share having one vote."

The president thereupon submitted such resolution to the vote of the board and all members of the Board, to-wit: J. S. Clarkson, J. S. Runnells, J. S. Polk, F. M. Hubbell, being present and voting therefor it was declared carried by the unanimous vote of the Board of Directors.

On motion the Secretary of this Company was directed to cause this amendment to be duly recorded and a notice thereof published as provided by law."

And I further certify that a full, true and perfect transcript of the minutes of such meeting as set out in the records of said company so far as they relate to the amendment of Article IV of the Articles of Incorporation are set out above.

Signed this 23rd day of January, A. D. 1884, and attested with the seal of the Company.

(Seal) F. M. HUBBELL, Secretary.

Filed for record Jan. 23, 1884, at 4½ o'clock P. M. and recorded in Book 4, page 99, Records of Articles of Incorporation Polk County, Iowa.

J. J. PAYNE, Recorder.
State of Iowa—ss.

Filed for record in office of Secretary of State Jan. 31, A. D. 1884.

J. A. T. HULL,
Secretary of State.
W. T. Hammond, Deputy.

Plffs. Exhibit No. 4.

Contract entered into Jan. 2nd, 1882, between the Des Moines & St. Louis Railroad Co., the Des Moines Northwestern Ry. Co., the St. Louis, Des Moines & Northern Ry. Co., G. M.

Dodge, James F. How and Jas. F. How, Trustee, being "Exhibit A" to bill.

"This Agreement made at the City of New York, the second day of January, 1882, by and between the Des Moines and St. Louis Railway Company, the Des Moines Northwestern Railway Company, and the St. Louis, Des Moines and Northern Railway Company, and the several individual signers hereto,

Witnesseth:

First.

The Companies above named are engaged in the construction of railways converging at the City of Des Moines and have heretofore agreed upon the purchase, construction and maintenance, at their joint expense for terminal facilities in the City of Des Moines to be held and used in common as hereinafter provided.

Second.

In pursuance of said agreement, various purchases have been made of real property in the City of Des Moines in the name of James F. How, individually, James F. How, Trustee, and Grenville M. Dodge, and certain additional property has been appropriated by the Des Moines and St. Louis Railway Company, and the construction of buildings and other improvements upon said premises has been begun.

Third.

It is mutually agreed by the parties above named, that the expense incurred by the purchases and improvements above mentioned and such others as may be hereafter made, shall be borne in the proportion of one-half by the Des Moines and St. Louis Railway Company and one-quarter by each of the other two Companies above named. It is understood that a Depot Company may be organized and may take permanent charge of the property upon the terms herein set forth and that said Company may issue and deliver to the Companies, parties hereto, its mortgage bonds for the amount of their respective portions of the cost of the purchases and improvements.

Fourth.

The title to said property shall be and remain in a trustee to be named by agreement of said Companies but subject to the joint use and occupation of all of said Railway Companies upon the terms herein described.

Fifth.

The individual signers hereto hereby declare said purchases to have been made in their names upon the trusts above re-

ferred to, and agree to quit claim and convey the same to said trustee upon demand and reimbursement.

Sixth.

The Des Moines and St. Louis Company shall at all times be charged with the police control, supervision and maintenance of said property, and the expense thereof shall be apportioned between it and the said other two Companies, the apportionment to be determined by the use thereof which they shall respectively make as evidenced by the wheelage; payment of the sum required to be made monthly to the Des Moines and St. Louis Railway Company, within ten days after rendition of an account stated.

Seventh.

The control of said property by the Des Moines and St. Louis Railway Company shall not extend to a determination of the character and extent of improvements to be now or hereafter put upon the same, but differences between the parties under this head shall be settled by arbitration.

Eighth.

It is understood and agreed that spur tracks shall be built connecting the said terminal grounds with such manufactories and other sources of trade in and about the City of Des Moines, as afford sufficient opportunity for profit by so doing, and that all of said tracks shall be adapted for use for both broad and narrow gauge trucks, provided that in case either of said Companies shall deem the construction of any of said tracks as not advantageous to its business, the question of constructing said track, and which of the parties hereto shall pay therefore shall be determined by arbitration.

Ninth.

Taxes and assessments levied upon said property shall be charged to maintenance account.

Tenth.

In the event that any Company, whose railroad does not extend to Des Moines, shall effect an arrangement for running its trains into Des Moines over the railroad of either of the parties hereto, such Company shall be entitled to the use of all of said terminal facilities upon the payment of a fair sum for rental and its proportion of the maintenance account, the rental to enure to the companies hereto in the same proportion as the original outlay, and the sum due from such Company for maintenance account, to be determined in the same manner as the sums due from the other Companies, parties hereto. Rail-

road Companies whose roads extend to Des Moines, may be admitted to the use of said facilities by agreement of all the Companies parties hereto.

Eleventh.

All differences arising under this agreement shall be referred to arbitration, one of said arbitrators shall be chosen by the Des Moines and St. Louis Railway Company, another by the St. Louis, Des Moines & Northern Railway Company and the third by the two thus selected.

The judgment of any two of the said arbitrators shall be final. If the matters of difference shall be between the Des Moines and St. Louis and the Des Moines Northwestern, then the second arbitrator shall be chosen by the Des Moines Northwestern and not by the St. Louis, Des Moines & Northern.

Twelfth.

It is mutually understood that the grounds so to be held in common by the Companies, parties hereto, are all east of Farnham Street in the City of Des Moines, and that no grounds west of Farnham Street have been acquired under this agreement.

In Witness Whereof the said Railway Company, parties hereto, have caused these presents to be executed by their respective residents under their respective corporate seals, attested by the Secretaries of the said Companies and the several individual signers hereto have executed the same the day and year first above written.

THE DES MOINES AND ST. LOUIS RAILWAY COMPANY.

(Corporate Seal)

By J. S. Clarkson, President.

Attest:

J. S. POLK, Secretary.

THE DES MOINES NORTHWESTERN RAILWAY COMPANY.

(Corporate Seal)

By J. S. Polk, President.

Attest:

J. S. RUNNELLS, Secretary.

THE ST. LOUIS, DES MOINES AND NORTHERN RAILWAY COMPANY.

(Corporate Seal)

By J. S. Clarkson, President.

Attest:

J. S. POLK, Secretary.

(Seal)

G. M. DODGE,

(Seal)

JAMES F. HOW,

(Seal)

JAMES F. HOW, Trustee.

The Wabash, St. Louis and Pacific Railway Company hereby consents to the execution of the within contract by the Des Moines and St. Louis, and the Des Moines Northwestern Companies.

THE WABASH, ST. LOUIS AND PACIFIC RAILWAY COMPANY.

(Corporate Seal)

By Solon Humphreys, President.

Attest:

James F. How, Secretary.

Piffs. Exhibit No. 5.

Proceedings of Board of Directors,
Des Moines Northwestern Ry. Co.

Board Meeting—December 9th, 1884.

The Board met this day in regular session. A quorum being present, the meeting was called to order by the President and the minutes of the meeting of this Board for July, August, September, October and November being read, were approved and signed.

Thereupon John S. Runnells offered for the consideration of the Board the following resolution, to-wit:

"Whereas heretofore, to-wit, on the 2nd day of January, 1882, the Des Moines & St. Louis Railroad Company, the Des Moines & Northwestern Railway Company, the St. Louis, Des Moines & Northern Railway Company, G. M. Dodge, Jas. F. How, and Jas. F. How, Trustee, entered into a contract whereby it was agreed to purchase and use certain real estate and franchises theretofore acquired by certain of said parties for terminals facilities in Des Moines; and,

Whereas, it is desirable that a corporation be organized for the purpose of taking and holding such property;

Now Therefore, be it Resolved, that J. S. Polk and F. M. Hubbell be and they are appointed to act for this Company in the organization of such corporation, and they are selected to act as two of the directors of said proposed corporation so to be organized for the purpose of carrying out the objects of said contract of January 2nd, 1882."

Said resolution after being duly considered was unanimously adopted.

There being no other business before the Board, it adjourned.

J. S. POLK, Prest.

J. S. Runnells, Secy.

Piffs, Exhibits Nos. 5½ and 6.

Proceedings had at First Meeting of Incorporators, Des Moines Union Ry. Co., together with original Articles of Incorporation, which Articles of Incorporation are "Exhibit B" to Amended Bill.

Des Moines, Ia., December 10th, 1881.

At a meeting held in Des Moines, Ia., on the 10th day of December, 1881, for the purpose of organizing a Union Depot & Railroad Company, to be run and operated in and around the City of Des Moines, Ia., in pursuance of a contract heretofore, to-wit: on the 2nd day of January, A. D. 1882, entered into by and between the Des Moines & St. Louis Railroad Company, The Des Moines Northwestern Railway Company, The St. Louis, Des Moines & Northern Railway Company, G. M. Dodge, James F. How and James F. How, Trustee.

There were present: G. M. Dodge, who appeared for himself and in the interest of the St. Louis, Des Moines & Northern Railway Company, J. S. Polk, F. M. Hubbell, who appeared for the Des Moines Northwestern Railway Company, and John S. Runnells and C. F. Meek, who appeared for the Des Moines & St. Louis Railroad Company, as well as for James F. How, both as Trustee and in his individual capacity.

The meeting organized by electing G. M. Dodge President and F. M. Hubbell, Secretary.

The meeting was then called to order by the President and John S. Runnells offered the following, to-wit:

Resolved, that for the purpose of carrying out the objects and purposes of the agreement heretofore, to-wit, on the 2nd day of January, 1882, made and entered into by and between the Des Moines & St. Louis Railroad Company and others, (which is set out in full in the following Articles of Incorporation.)

That the following be adopted as the Articles of Incorporation of the Des Moines Union Railway Company, to-wit:

Articles of Incorporation of the Des Moines Union Railway Company.

Whereas:

The Des Moines & St. Louis, the Des Moines Northwestern and the St. Louis, Des Moines & Northern Railway Companies have been engaged in the construction of railways converging at Des Moines, Ia., and have secured certain franchises, purchased certain realty and made certain improvements thereon—which they have heretofore agreed should be secured, purchased, made and maintained upon certain agreed conditions, at their joint expense—in accordance with a contract made and

entered into by and between said companies and Grenville M. Dodge and James F. How, Trustee, bearing date January 2nd, A. D. 1882, and which contract is in words and figures as follows, to-wit:

"THIS AGREEMENT made at the City of New York, the second day of January, 1882, by and between the Des Moines and St. Louis Railroad Company, The Des Moines Northwestern Railway Company and the St. Louis, Des Moines & Northern Railway Company and the several individuals, signers hereto:

Witnesseth:

First: The Companies above named are engaged in the construction of railways converging at the City of Des Moines, and have heretofore agreed upon the purchase, construction and maintenance, at their joint expense, for terminal facilities in the City of Des Moines, to be held and used in common as hereinafter provided.

Second: In pursuance of said agreement, various purchases have been made of real property in the City of Des Moines in the name of James F. How, individually, James F. How, Trustee, and Grenville M. Dodge, and certain additional property has been appropriated by the Des Moines & St. Louis Railroad Company and the construction of buildings and other improvements upon said premises have been begun.

Third: It is mutually agreed by the parties-above named that the expenses incurred by the purchase and improvement above mentioned and such others as may be hereafter made shall be borne in the proportion of one-half by the Des Moines & St. Louis Railroad Company and one quarter by each of the other two companies above named. It is understood that a Depot Company may be organized and may take permanent charge of the property upon the terms herein set forth, and that said Company may issue and deliver to the companies parties hereto its mortgage bonds, to the amount of their respective portions of the costs of said purchases and improvements.

Fourth: The title of said property shall be and remain in a Trustee, to be named by agreement of said Companies, but subject to the joint use and occupation of all of said Railway Companies upon the terms herein described.

Fifth: The individual signers hereto hereby declare said purchase to have been made in their names upon the trusts above referred to, and agree to quit-claim and convey the same to said Trustee upon demand and reimbursement.

Sixth: The Des Moines & St. Louis Company shall at all times be charged with the police control, supervision and maintenance of said property, and the expense thereof shall be ap-

portioned between it and the said other two companies—the apportionment to be determined by the use thereof which they shall respectively make—as evidenced by the wheelage; the payment of the sum required to be made monthly to the Des Moines & St. Louis Railroad Company within ten days after a rendition of an account stated.

Seventh: The control of said property by the Des Moines & St. Louis Railroad Company shall not extend to a determination of the character and extent of improvements to be now or hereafter put upon the same, but differences between the parties, under this head, shall be settled by arbitration.

Eighth: It is understood and agreed that spur tracks shall be built connecting the said terminal grounds with such manufacturing and other sources of trade, in and about the City of Des Moines, as afford sufficient opportunity for profit by so doing, and that all of said tracks shall be adopted for use for both broad and narrow gauge tracks, provided that in case either of said companies shall deem the construction of any of said tracks as not advantageous to its business, the question of constructing said track and which of the parties hereto shall pay therefor, shall be determined by arbitration.

Ninth: Taxes and assessments levied upon said property shall be charged to maintenance account.

Tenth: In the event that any company, whose railroad does not extend to Des Moines, shall effect an arrangement for running its trains into Des Moines over the railroad of either of the parties hereto, such company shall be entitled to the use of all of said terminal facilities upon the payment of a fair sum for rental, and its portion of the maintenance account; the rental to enure to the Companies hereto in the same proportion as the original outlay, and the sum due from such company, for maintenance account, to be determined in the same manner as the sums due from the other companies, parties hereto. Railroad Companies whose roads extend to Des Moines may be admitted to the use of said facilities by agreement of all the companies, parties hereto.

Eleventh: All differences arising under this agreement shall be referred to arbitration. One of said Arbitrators shall be chosen by the Des Moines & St. Louis Railroad Company, another by the St. Louis, Des Moines and Northern Railroad Company, and the third by the two thus selected. The judgment of any two of the said Arbitrators shall be final. If the matters of difference shall be between the Des Moines & St. Louis and the Des Moines Northwestern, then the second Arbitrator shall be chosen by the Des Moines Northwestern and not by the St. Louis, Des Moines and Northern.

Twelfth: It is mutually understood that the grounds so to be held in common by the Companies, parties hereto, are all east of Farnham Street in the City of Des Moines, and that no grounds west of Farnham Street has been acquired under this agreement.

In Witness Whereof, the said Railway Companies, parties hereto, have caused these presents to be executed by their respective Presidents, under their respective corporate seals, attested by the Secretaries of the said Companies, and the several individual signers hereto have executed the same the day and year first above written.

THE DES MOINES AND ST. LOUIS
RAILROAD CO.,

By J. S. Clarkson, President.

Attest:

J. S. Polk, Secy.

THE DES MOINES NORTHWESTERN
RAILWAY CO.,

By J. S. Polk, President.

Attest:

J. S. Runnells, Secy.

THE ST. LOUIS, DES MOINES &
NORTHERN RY. CO.,

By J. S. Clarkson, President.

Attest:

J. S. Polk, Secy.

The Wabash, St. Louis & Pacific Railway Company hereby consents to the execution of the within contract by the Des Moines & St. Louis and the Des Moines & Northwestern Companies.

THE WABASH, ST. LOUIS & PACIFIC
RAILWAY CO.,

By Solon Humphreys, President."

Attest:

Jas. F. How, Secy.

Whereas, each of said Railway Companies and said parties has expended large sums of money in purchasing and improving the property aforesaid, and in the construction of suitable buildings for the use of said Companies, and

Whereas, it was provided in the contract aforesaid that a Depot Company might be organized to take permanent charge of the property, and it was the understanding of the parties that such Company might acquire, operate and maintain said property in such manner as best to serve the interest of the parties hereto.

Now Therefore, for the purposes aforesaid, as well as for those hereinafter expressed, the undersigned hereby associate themselves in a body corporate, and adopt the following:

Articles of Incorporation.

Article 1.

The name of the corporation shall be the Des Moines Union Railway Company, and its principal place of transacting business shall be Des Moines, Ia.

Article 2.

The general nature of the business to be transacted shall be the construction, ownership and operation of a railway in, around and about the City of Des Moines, Iowa, including the construction, ownership and use of depots, freight-houses, railway shops, repair shops, stock-yards and whatever else may be useful and convenient for the operation of railways at the terminal point of Des Moines, Ia., as well as the transfer of cars from the line or depot of one railway to another, or from the various manufactories, warehouses, store-houses, or elevators to each other or to any of the railways or depots thereof, now constructed or to be hereafter constructed, in or around said City of Des Moines, and such corporation shall possess all the powers conferred upon corporations for pecuniary profit by Chapter I. of Title IX. of the Code, and the amendments thereto. All the powers exercised by this Company shall be in accordance with the terms and spirit of the aforesaid contract entered into on the 2nd day of January, A. D. 1882, by and between the Des Moines and St. Louis Railroad Company, the Des Moines Northwestern Railway Company, The St. Louis, Des Moines & Northern Railway Company, Jas. F. How, Jas. F. How, Trustee, and Grenville M. Dodge. The said Company shall have the right to lease or otherwise dispose of the use of any part of its franchises to any other Railway Company—provided that the assent in writing of the Des Moines & St. Louis Railroad Company, The Des Moines Northwestern Railway Company and The St. Louis, Des Moines and Northern Railway Company shall be necessary before any such lease or disposition can be made to any other than the parties above named.

Article 3.

The capital stock of this corporation shall be One Million (\$1,000,000.00) Dollars, which shall be divided into shares of one hundred (\$100.00) Dollars each, and shall be paid in at such times and in such manner as the Board of Directors may determine, and the Board are authorized to receive in payment therefor the property and franchises in the City of Des

Moines, now held by the Des Moines & St. Louis Railroad Company, the Des Moines Northwestern Railway Company, the St. Louis, Des Moines & Northern Railway Company, Jas. F. How, Trustee, Jas. F. How and Grenville M. Dodge.

Article 4.

The affairs of the Company shall be managed by a Board of eight directors, who shall be elected annually, by the stockholders, on the first Thursday of January of each year. The provisional Board of Directors, who shall hold office until the first Thursday in January, A. D. 1886, shall consist of Jas. F. How, A. L. Hopkins, A. A. Talmage, J. S. Runnells, J. S. Polk, F. M. Hubbell, G. M. Dodge, C. F. Meek.

Four members of the Board shall be nominated by the Wabash, St. Louis & Pacific Railway Company, two members by the Des Moines Northwestern Railway Company and two members by the St. Louis, Des Moines & Northern Railway Company, and no stockholders shall be eligible for membership of the Board unless so nominated.

The fact that a candidate has been duly nominated shall be certified to the Stockholders' meeting of this Company by the Secretary of one of the respective companies aforesaid and such certification shall be conclusive.

The provisions herein with respect to nomination for the Board of Directors shall apply to and be enjoyed by any grantee or assignee of either of the railway companies aforesaid. No contract, lease, or other agreement, amounting to a permanent charge upon the property of the corporation, shall be entered into by the Board unless the same shall have been first approved by the Des Moines & St. Louis Railroad Company, The Des Moines Northwestern Railway Company and The St. Louis, Des Moines and Northern Railway Company, or their assigns, and shall have been submitted to a meeting of the stockholders, duly called, and shall have been approved by more than three-fourths of all the stockholders; and it shall not be within the power of the Board of Directors to create any obligation whatsoever upon any of the franchises of the corporation, except the same shall have been submitted to and approved by the Stockholders as hereinbefore provided.

The Directors shall elect, from their number, a President, Vice President, Secretary and Treasurer. All vacancies arising from the death or resignation of a member of the Board shall be filled by the Board.

Article 5.

The President, Vice President, Secretary and Treasurer, shall possess the powers and discharge the duties of like officers of similar corporations, subject to the limitations imposed by these Articles. The officers, hereby constituted, who shall hold their places until the first Thursday in January, 1886, or until their successors are duly chosen, shall be as follows:

President	G. M. Dodge.
Vice President	Jas. F. How.
Secy. & Treasurer	F. M. Hubbell.

Article 6.

The private property of Stockholders shall be exempt from liability for corporate debts and undertakings.

Article 7.

The highest amount of indebtedness to which the corporation may at any time subject itself shall be the amount authorized by law.

Article 8.

Meetings of the Board of Directors may be called by the President or, in case of his absence or disability, by the Vice President, and shall be called upon request preferred in writing by two members of the Board.

Article 9.

These Articles may be amended by a vote of more than three-fourths of all the stock in favor thereof, at a meeting of stockholders thereof, of which a notice containing the proposed amendments shall be mailed to each stockholder at his address, as disclosed by the transfer books of the Company. Notice of such proposed meeting shall also be given by publication for three successive weeks in some newspaper of general circulation—published in the City of Des Moines, Iowa.

Article 10.

This corporation shall commence on the Fifth day of December, A. D. 1884, and continue fifty years, with the right of renewal.

In Testimony Whereof, we have hereunto set our names this 10th day of December, A. D. 1884.

J. S. POLK.
F. M. HUBBELL.
J. S. RUNNELLS.

State of Iowa,
Polk County—ss.

On this 10th day of December, 1884, personally appeared before me, C. Huttenlocher, a Notary Public in and for the

County of Polk, J. S. Polk, F. M. Hubbell and J. S. Runnells, to me personally known to be the identical persons whose names are affixed to the foregoing instrument as Incorporators, and acknowledged the execution of the same to be their voluntary act and deed for the purposes therein expressed.

(Notarial Seal)

C. HUTTENLOCHER,
Notary Public, Polk Co.

Filed for record Dec. 10th, 1884, at 4½ a'clock P. M.

J. J. PAYNE,
Recorder.

Which resolution, after being considered by the meeting, was unanimously adopted, and said Articles of Incorporation were approved and the same were signed and acknowledged.

On motion, the Secretary was directed to file said Articles of Incorporation for record, and publish notice of same as required by law. Whereupon the meeting adjourned.

Attest:

F. M. Hubbell, Secretary.

Plffs. Exhibit No. 7.

Resolutions adopted at the Stockholders' Meeting of St. Louis, Des Moines and Northern Railway Company, January 1st, 1885, being "Exhibit D" to Bill.

Stockholders' Meeting, January 1st, 1885.

On motion of F. M. Hubbell, the following preamble and resolutions were submitted to the meeting for its consideration, to-wit, and were unanimously adopted:

Whereas the Des Moines and St. Louis Railroad Company, the Des Moines North Western Railway Company, the St. Louis, Des Moines and Northern Railway Company, G. M. Dodge and James F. How and Jas. F. How, Trustee, on the 2nd day of January, A. D. 1882, entered into a contract whereby it was agreed to purchase, hold, control and use certain real estate, and franchises, in the City of Des Moines, which had theretofore been held and used by certain of the individual parties thereto, for certain purposes and upon certain conditions set out in said contract; and

Whereas, on the 10th day of December, A. D. 1884, a corporation under the name and style of the Des Moines Union Railway Company was organized as contemplated, and provided in the aforesaid contract to acquire, hold, use and enjoy the real estate property, rights and franchises in the City of Des Moines, east of Farnham Street in said City of the aforesaid railway companies and signatories of said contract ac-

quired or held thereunder and to carry out the purposes of the said contract of January 2nd, 1882.

Now Therefore:

1. Resolved, That this Company accepts and ratifies so far as its interests are affected thereby, the Articles of Incorporation of the Des Moines Union Railway Company as in substantial accord and compliance with the terms and conditions of the said contract of January 2, 1882, and undertakes to discharge all the obligations imposed upon it by said contract in order to make effective the purposes of said Des Moines Union Railway Company.

II. Resolved: That the proper officers of this Company be authorized upon the issuance to it of the share of the bonds and stock of said Des Moines Union Railway Company to which it may be entitled, under said contract to convey, assign and transfer to said Company all its right, title and interest of whatever name and character, in and to the real estate, franchises, choses in action, and rights in possession or contingent to all the property in the City of Des Moines east of Farnham Street in said City, now held, enjoyed or claimed by either or all of the signatories of said contract of January 2, 1882, or any agent or trustee thereof purchased acquired or held in pursuance of said contract.

Plffs. Exhibit No. 8.

Proceedings had at Meeting of Stockholders Des Moines Northwestern Railway Company, January 1st, 1885, "Exhibit F" to Bill.

The stockholders met this day in regular session, a notice thereof having been published in The Daily Iowa State Leader, a copy of which is hereto attached.

The meeting being called to order by the President, it was ascertained that there were present and represented 10075 shares of stock. J. S. Runnels by power of Attorney, representing the stock of this Company, held, and controlled by the Mercantile Trust Company, F. M. Hubbell, President of the Narrow Gauge Railway Construction Company representing its stock, and Polk and Habbell, representing their own stock, in the Company. The President thereupon requested the Secretary to read the minutes of the last annual stockholders meeting which was done, and there being no objections made thereto, they were approved and the President and Secretary were directed to sign the same.

The reading of the minutes of the proceedings of the Board of Directors for the past year being called for by the stockholders, the same were read by the Secretary and after considering the same, they were approved and the acts of the Board and of the officers of the Company for the year 1884, were on motion of J. S. Clarkson, fully ratified and confirmed.

Thereupon J. S. Runnells presented a communication from Jas. F. How, Genl. Agt., which is in words and figures following, to-wit:

Wabash, St. Louis & Pacific Railway.
Solon Humphreys and Thomas E. Tutt,
Receivers.

Jas. F. How,
General Agent for the Receivers.

St. Louis, Mo. Dec. 27th, 1884.

Hon. J. S. Runnells,
Des Moines.

Dear Sir:

Enclosed please find proxy authorizing you to vote the stock held by the Mercantile Trust Company in the D. M. N. W. Ry. Co. Please vote for the following parties as Directors, J. S. Polk, John S. Polk, F. M. Hubbell, F. C. Hubbell, J. S. Runnells, J. F. How, A. L. Hopkins, J. S. Clarkson and A. A. Talmage.

Yours truly,

JAMES F. HOW,
Gen. Agt.

And moved that the meeting proceed to the election of a Board of Directors for the ensuing year, which was adopted.

Whereupon Mr. Hubbell, in behalf of the Narrow Gauge Railway Construction Company, nominated Jefferson S. Polk, John S. Polk, F. C. Hubbell and F. M. Hubbell, for election as members of the Board of Directors.

And Mr. Runnells in behalf of the Mercantile Trust Company nominated, J. F. How, A. L. Hopkins, J. S. Clarkson and A. A. Talmage. Mr. Hubbell then nominated J. S. Runnells to be voted for as the ninth member of said Board whose nomination was acceptable to the Mercantile Trust Company represented by said nominee.

Ballotting for the persons thus nominated being in order, a vote was taken with the following results, to-wit:

10075 shares of stock being all stock present and represented, were voted for the nine gentlemen above nominated, and they

were declared duly elected as members of said Board for the ensuing year.

On motion of J. S. Runnells, the following resolution was offered:

Resolved, that this Company ratifies and approves the selection heretofore made of J. S. Polk and F. M. Hubbell to serve as directors of the Des Moines Union Railway Company in accordance with the provisions of Article four (4) of the Articles of Incorporation, of that Company authorizing this Company to nominate two members of the Board of Directors of said Company.

On motion of F. M. Hubbell, the following preamble and resolution were submitted to the meeting for its consideration, to-wit:

Whereas, The Des Moines, St. Louis Railroad Company, the Des Moines Northwestern Railway Company, the St. Louis Des Moines and Northern Railway Company, G. M. Dodge, James F. How, and James F. How, Trustee, on the 2nd day of January, 1882, entered into a contract whereby it was agreed to purchase, hold, control and use certain real estate and franchises in the City of Des Moines which had theretofore been held and used by certain of the individual parties hereto for certain purposes and upon certain conditions set out in said contract, and

Whereas, on the 10th day of December, A. D. 1884, a corporation under the name and style of the Des Moines Union Railway Company was organized as contemplated and provided in the aforesaid contract, to acquire, hold, use and enjoy the real estate, property rights and franchises in the City of Des Moines East of Farnham Street in said City of the aforesaid railway company and signatories of said contract acquired or held thereunder, and to carry out the purposes of the said contract of January 2nd, 1882:

Now Therefore, Resolved, That this Company accepts and ratifies so far as its interests are affected, thereby, the Articles of Incorporation of the Des Moines Union Railway Company as in substantial accord and compliance with the terms and conditions of the said contract of January 2nd, 1882, and undertakes to discharge all the obligations imposed upon it by said contract in order to make effective the purposes of said Des Moines Union Railway Company.

Resolved, That the proper officers of this Company be authorized upon the issuance to it of the share of the bonds and stock of said Des Moines Union Railway Company to

which it may be entitled under said contract to convey, assign and transfer to said company all its right, title and interest of whatever name and character in and to the real estate, franchises, choses in action, and rights in possession or contingent to all the property in the City of Des Moines East of Farnham Street in said City now held, enjoyed or claimed by either or all of the signatories of said contract of January 2nd, 1882, or any agent or trustee thereof purchased, acquired, or held in pursuance of said contract.

The same having been duly considered, was on motion, adopted, all the stockholders present and represented voting therefor.

On motion of Mr. Runnells, the following resolution was submitted to the meeting, to-wit:

Resolved, That the proper officers of the company be authorized to transfer the management and operation of its property in Des Moines, so far as the same may now be vested in the Company to the Des Moines Union Railway Company on the 1st day of January, 1885, or as soon thereafter as practicable, leaving the question of settlement between this company and the Des Moines Union Railway Company as authorized under the resolution for that purpose heretofore this day adopted to be arranged as directed therein, and the same being duly considered was adopted by the meeting, all the stock present and represented, voting therefor.

On motion of Mr. Hubbell, the following preamble and resolution were offered, to-wit:

That Whereas, the Wabash, St. Louis & Pacific Railway Company has defaulted in the payment of the interest due on its general mortgage bonds and its railroad and property, has on its own motion been put in the hands of a Receiver; and Whereas, it has failed to comply with the terms of the lease of this Company's road to it, and proceedings are about to be commenced by its bondholders to foreclose the mortgage given to secure the same, whereby this Company's rights may be prejudiced.

Now Therefore Be It Resolved, That the Board of Directors of this Company be and they are directed through its officers to take all necessary steps for the protection of this company's interest and the enforcement of the terms of said lease of this company's road to the Wabash, St. Louis & Pacific Railway Company.

And the action of the Board of Directors and the officers of this Company with reference thereto is approved and ratified.

There being no other business before the meeting, it on motion adjourned.

J. S. POLK,
Pres.

J. S. RUNNELLS,
Secy.

Board Meeting.

January 1st, 1885.

The newly elected Board of Directors met this day, a quorum being present, to-wit:

Jefferson S. Polk, Jno. S. Polk, Fred C. Hubbell, F. M. Hubbell, J. S. Clarkson and J. S. Runnells.

Whereupon on motion of John S. Runnells, the Board proceeded to organize by the election of officers for the ensuing year, and

Jefferson S. Polk was elected President of the Company, J. S. Clarkson, Vice President, J. S. Runnells, Secretary and F. M. Hubbell Treasurer for the ensuing year.

And J. S. Polk, President, J. S. Clarkson, Vice President, J. S. Runnells, Secy., and F. M. Hubbell Treasurer, were elected Executive Committee of the Company.

Whereupon, J. S. Clarkson handed in his resignation as member of the Board of Directors, which is in words and figures following, to-wit:

Des Moines, Ia. Jan. 1st, 1885.

I hereby resign as member of Board of Directors of the Des Moines Northwestern Railway Company to take effect in (10) ten days from date.

J. S. CLARKSON.

Which was accepted. On motion the Board adjourned.

J. S. POLK,
Pres.

Adjourned.

J. S. RUNNELLS,
Secy.

Piffs. Exhibit No. 9.

Proceedings had at Meeting of Stockholders Des Moines and St. Louis R. Co., January 1st, 1885, being "Exhibit G" to Amended Bill.

Stockholders Meeting,
January 1st, 1885.

The stockholders of the Des Moines & St. Louis Railroad Company met this day in regular session. A notice of such meeting having been duly published in the Daily Iowa State Register a copy of which is as follows, to-wit:

Notice.

The stockholders of the Des Moines & St. Louis Railroad Company are hereby notified to meet at the office of the Company in the Equitable Block, Des Moines, Iowa, at 10 o'clock A. M. on Thursday, January 1st, 1885, for the purpose of electing officers for the ensuing year and transacting such other business as may properly come before said meeting.

The transfer of the Company's interest in the terminal property at Des Moines to the Des Moines Union Railway Company will be considered, and such action taken as may be necessary to carry into effect the contract between the company and the other joint owners respecting it.

F. M. Hubbell,
Secretary.

J. S. CLARKSON,
President.

The meeting was called to order by the President, J. S. Clarkson, and it was ascertained that there was present, and represented the following stock, to-wit: The Mercantile Trust Company by its Attorney,

John S. Runnells	voted	9996	shares
J. S. Clarkson,	"	1	"
J. S. Polk	"	1	"
F. M. Hubbell,	"	1	"

The minutes of the preceding Stockholders meeting were read, approved and signed. It being made to appear that there was no meeting of the Board of Directors during the year 1884 by reason of there being no quorum at the regular monthly meeting of said Board and that no election of officers was had for such year, and that the officers elected for the year 1883 held over and continued to act as such.

On motion their authority so to do was recognized, and their acts approved, and it being further made to appear that some delay may be had in procuring a quorum of the Board hereafter for the election of officers for the ensuing year, it was on motion,

Resolved,

That the present officers of the company held over until their successors are elected and qualified.

Thereupon J. S. Runnells presented a communication of James F. How, General Agent etc., which is in words, and figures following:

"St. Louis, Dec. 27, 1884.

Hon. J. S. Runnells,
Des Moines, Iowa.

Dear Sir:

Enclosed please find proxy authorizing you to vote the stock held by the Mercantile Trust Company in D. M. & St. L. R. R. Co., at the annual meeting to be held January 1st. You will please vote this stock for the following gentlemen as Directors, J. S. Clarkson, F. M. Hubbell, J. S. Runnells, James F. How, W. H. Blodgett, A. A. Talmage, A. S. Hopkins, D. S. H. Smith, and J. S. Polk,

Yours truly,

JAMES F. HOW,
Gen. Agt. etc.

And moved that this meeting proceed to the election of a Board of Directors for the ensuing year which motion was adopted by the unanimous vote of the stockholders, and he thereupon nominated for such Board of Directors the following named gentlemen:

J. S. Clarkson,	F. M. Hubbell,	J. S. Runnells,
James F. How,	W. H. Blodgett,	A. A. Talmage,
A. S. Hopkins,	D. S. H. Smith,	J. S. Polk,

Whereupon a ballot was taken for such Board of Directors and it was ascertained that each of said named parties had received the unanimous vote of all of the stockholders present and represented and were declared unanimously elected as Directors for the ensuing year.

On motion of F. M. Hubbell, the following Resolution was unanimously adopted.

"Resolved,

That this company ratify and approve the selection heretofore made of J. F. How, A. S. Hopkins, A. A. Talmage & J. S. Runnells, to serve as Directors of the Des Moines Union Railway Company in accordance with the provision of Article 4 of the Articles of Incorporation of that company authorizing this company to nominate four members of the Board of Directors of said Company.

On motion of J. S. Polk the following preamble and resolutions were submitted to the meeting for its consideration to-wit:

Whereas the Des Moines & St. Louis Railroad Co., the Des Moines Northwestern Railway Company, the St. Louis Des Moines & Northern Railway Company, G. M. Dodge, James F. How, and James F. How, Trustee, on the 2nd day of January A. D. 1882 entered into a contract whereby it was agreed to purchase, hold, control and use certain real estate and franchises, in the city of Des Moines which had heretofore been held and used by certain of the individual parties thereto for certain purposes and upon certain conditions set out in said contract, and

Whereas on the 10th day of December A. D. 1884 a corporation under the name, and style of the Des Moines Union Railway Company was organized as contemplated, and provided, in the aforesaid contract to acquire, hold, use and enjoy the real estate, property, rights and franchises in the City of Des Moines, East of Farnham street in said City of the aforesaid Railway Companies and signatories of said contract acquired or held thereunder, and to carry out the purposes of said contract of January 2nd, 1882.

Now Therefore,

Resolved, that this company accepts and ratifies so far as its interests are affected thereby the Articles of Incorporation of the Des Moines Union Railway Company as in substantial accord and compliance with the terms and conditions of the said contract of January 2nd, 1882 and undertakes to discharge all the obligations imposed upon it by said contract in order to make effective the purposes of said Des Moines Union Railway Co.

Resolved, That the proper officers of this Company be authorized upon the issuance to it of the share of the Bonds and stock of said Des Moines Union Railway Company to which it may be entitled under said contract to convey, assign, and transfer to said company all its right title and interest of whatever name and character, in and to the real estate, franchises, choses in action, and rights in possession or contingent to all the property in the City of Des Moines, East of Farnham street in said city now held enjoyed or claimed by either or all of the signatories of said contract of January 2nd, 1882 or any agent or trustee thereof purchased acquired or held in pursuance of said contract.

The same having been duly considered was on motion adopted. All the stockholders present and represented voting therefor.

On motion of J. S. Rannels the following resolution was submitted to-wit:

Resolved, That the proper officers of the company be authorized to transfer the management and operation of its property in Des Moines so far as the same may now be vested in the company on the first day of January or as soon thereafter as practicable leaving the question of settlement between this company and the Des Moines Union Railway Company as authorized under the resolution for that purpose heretofore this day adopted to be arranged as directed therein.

And the same being duly considered was adopted by the meeting. All the stockholders present and represented voting therefor.

J. S. CLARKSON,
President.

F. M. HUBBELL,
Secretary.

Plffs. Exhibit No. 10.

Proceedings had at First Meeting Board of Directors, Des Moines Union Ry. Co., being "Exhibit C" to Amended Bill.

January 1st, 1885.

The Board met this day, pursuant to the call of the President, due notice thereof having been given to each member of the Board.

The members of said Board having each qualified by subscribing for one share of the Capital Stock of this Company.

There were present—G. M. Dodge, F. M. Hubbell, J. S. Runnells, J. S. Polk and C. F. Meek.

The meeting was called to order by the President.

On motion of John S. Runnells it was unanimously

Resolved, That the Secretary be instructed to procure a seal for said Company, which shall consist of a circular disc—having engraved around the outer edge thereof—the words "Des Moines Union Railway Company" and in the center the word "Seal," and that such device is hereby adopted as the seal of this Company, and until the same is procured, a scroll with the word "seal" written in the center thereof shall be regarded and treated as the seal of this company.

On motion of J. S. Polk, the following preamble and resolutions were submitted for the action of the Board, to-wit:

Whereas, the Des Moines and St. Louis Railroad Company, The St. Louis, Des Moines & Northern Railway Company, The

Des Moines Northwestern Railway Company, G. M. Dodge and James F. How, both in his individual right and as Trustee under the contract mentioned and set out in the Articles of Incorporation of this Company, have by their officers and by themselves, personally notified this Company that they have each for themselves approved of the organization of this Company, and have directed their officers, agents and trustees to surrender and deliver to this Company the railroad property and franchises mentioned in said contract, and requested it to take possession of, and maintain and operate the same for the purposes and on the terms mentioned in said contract, and that said railway companies and individual signatories have indicated their desire and purpose to transfer said property to this Company in accordance with the terms of said contract.

Whereas, it is desirable that this Company should at once take possession of said property and maintain, control and operate the same, and that it should procure all necessary conveyances and transfers of the same as soon as practicable, and make provisions for and pay for said property so proposed to be conveyed to it, Now Therefore be it.

Resolved,

First.

That this Company accepts the transfer and management and operation of said property in the City of Des Moines, East of Farnham Street in said City, heretofore owned and controlled by the Des Moines & St. Louis Railroad, Des Moines Northwestern Railway Company and the St. Louis, Des Moines & Northern Railway Company, and the several others, parties to said contract, and assumes control thereof from this date, so far as practicable, and it hereby instructs its President to make such order as may be necessary to render such control and management effective, as provided in said contract.

Second.

That the President, Vice President, Secretary and Treasurer, of this Company be, and they are hereby, appointed a Committee to confer with the several parties to said contract and agree with them severally upon the terms and price at which they will respectively assign, transfer and convey said railroad property and franchises to this Company, and procure from them, and each of them, such conveyance and transfers as may be necessary to fully invest this Company with the title, control and management of said properties provided for in said contract of January 2nd, 1882.

Third.

That to enable this Company to pay for the property and to maintain, operate and improve the same, and purchase other property necessary to carry out its objects, and remove any and all liens or incumbrances thereon, and pay off all just claims against the same, the President and Secretary of this Company are hereby authorized and directed to issue full-paid capital stock of this Company, not to exceed One Million (\$1,000,000.00) Dollars and not to exceed five hundred (500) bonds of this Company, of the denomination of One Thousand Dollars (\$1,000.00); the form to be agreed upon hereafter by this Board.

And to secure said bonds, the President and Secretary are authorized and directed to execute, in the name of this Company, a first mortgage or deed of trust, conveying all of said property so to be conveyed to this Company or thereafter to be acquired, to a trustee therein named, the form of which deed of trust shall be hereafter determined by this Board.

And when said Committee shall have agreed with the said several parties to said contract as to the amount of bonds and stocks of this Company necessary to be delivered to them, and each of them, in payment for said railroad property and franchises, the President and Secretary of this Company shall deliver the same to said several parties as each appear to be entitled, on receipt of the conveyances and assignments of said property so to be made to this Company.

The remainder of said bonds and stock so authorized to be issued shall be, by order of this Board, signed and issued from time to time as they may be needed for the purposes of the resolutions above set out authorizing their issuance, and for no other purpose.

Fourth.

That said Committee shall from time to time report to this Board their acts and doings under the foregoing resolution.

And, after due consideration, said Preamble and Resolution were unanimously adopted.

On motion of John S. Runnells, the following resolution was unanimously adopted, to-wit:

Resolved, That G. M. Dodge, the President of this Company, or such officer or director as he may designate, be authorized to negotiate with any railway company whose lines extend into Des Moines, or which may wish to acquire the right to use any part of the property of the Company, with authority

to make and fix any terms upon which such right may be acquired or enjoyed, subject to the approval of the Board of Directors of this Company and to the limitations imposed by its Articles of Incorporation.

Which was adopted.

On motion of C. F. Meek, the following By-Laws were adopted, to-wit:

By-Laws.

1. There shall be regular meetings of the Board of Directors of this Company on the second Tuesday of each month at 2 o'clock P. M., of which every member of this Board is charged with notice.

2. All contracts of this Company shall be signed by the President and countersigned by the Secretary.

The President, on his own motion, nominated C. F. Meek as Superintendent of the Company's property, and said Meek having received a majority of the votes cast for such position, was declared elected thereto.

Attest:

F. M. Hubbell,
Secretary.

Plffs. Exhibit No. 11.

Resolution adopted at meeting of Board of Directors, St. Louis, Des Moines & Northern Railway Co., November 5, 1887, being "Exhibit E", to Amended Bill.

Board Meeting, November 5, 1887.

The Board met this day pursuant to the call of the President.

The following directors were present: C. F. Meek, J. S. Polk, F. M. Hubbell.

The meeting being called to order by F. M. Hubbell, Vice President, the minutes of the last meeting were read and approved.

J. S. Polk offered the following preamble and resolution to-wit:

Whereas James F. How, has prior to 1881 and since then purchased certain property and made expenditures on same as Trustee for this company, the money expended for said property being furnished by the Wabash St. Louis & Pacific Railway Company, and,

Whereas, under an agreement between this company and the Wabash, St. Louis & Pacific Railway Company and others it was intended that said property, standing in the name of James F. How Trustee should be transferred to the Des Moines Union Railway Company under certain conditions it is hereby

Resolved, That James F. How is requested by this Company to transfer to the Des Moines Union Railway Company the property referred to above, so purchased on receiving from said company a stipulation that as soon as practicable after the transfer said Union Railway Co. is to deliver to him first mortgage bonds of that company to the amount of the money advanced for the payment of said property and improvements with interest on same and taxes paid thereon and also three fourths of the stock of the Des Moines Union Railway Company, said bonds and stock to be transferred by said How to the Purchasing Committee of the Wabash St. Louis & Pacific Railway Co. or their successors or assigns in lieu for the money advanced by said company to make the purchase of the above property and improvements and the payment of taxes for this company.

Which resolution after being duly considered were unanimously adopted.

C. F. Meek offered the following Resolution, to-wit:

Whereas, Grenville M. Dodge has prior to 1881 and since then purchased certain property and made expenditures on the same as Trustee for this company, the money expended for said property being furnished by the said Dodge, and

Whereas under an agreement between this company and the Wabash St. Louis & Pacific Railway Company and others, it was intended that said property standing in the name of Grenville M. Dodge, Trustee and Grenville M. Dodge, individually should be transferred to the Des Moines Union Railway Company under certain conditions, It is hereby

Resolved, That Grenville M. Dodge is requested by this Company to transfer to the Des Moines Union Railway Company the property referred to above so purchased on receiving from said company a stipulation that as soon as practicable said Union Railway Company is to deliver to him First Mortgage Bonds of that Company to the amount of the money advanced by him for the payment of said property and improvements with interest and taxes on the same and also one-fourth of the Capital Stock of the Des Moines Union Railway Company.

Which resolution after being duly considered was unanimously adopted.

C. F. Meek thereupon resigned his office as director which was accepted by the Board and L. M. Martin was unanimously elected to fill the vacancy caused by the resignation of said Meek.

Thereupon the Board adjourned.

J. S. POLK,
Asst. Secretary.

(pp. 65, 66 and 67 record)

Plffs. Exhibit No. 12.

Proceedings of Board of Directors Des Moines and St. Louis Railroad Company November 8, 1887, being "Exhibit 'II', to Amended Bill.

Board Meeting,
November 8th, 1887.

The Board met this day in regular session.

Present. James F. How, J. S. Clarkson, Wells H. Blodgett, John S. Runnells, J. S. Polk, and F. M. Hubbell.

The meeting being called to order by the President, J. S. Clarkson and the death of A. A. Talmage, one of the directors being suggested it was

Moved that the Board proceed to the election of a director to fill the vacancy caused by the death of said Talmage, which motion having carried James F. How nominated Charles M. Hays to be voted for, as such director, there being no other nominations a ballot was taken on the election of said Hays to fill such vacancy, and all the directors present having voted for him he was declared duly elected and he being present took his seat on the Board.

On motion of John S. Runnells the Board then proceeded to the election of officers of the company to act as such until the next regular election of the company and until their successors are duly elected and a ballot having been taken the following officers were elected to such offices to-wit:

J. S. Clarkson, was elected, President,
J. S. Runnells, was elected, Vice President,
F. M. Hubbell, was elected Secretary,
James F. How, was elected, Treasurer.

Charles M. Hays offered the following Resolution and moved its adoption to-wit:

Whereas, James F. How, has prior to 1881 and since purchased certain property and made expenditures on same as

Trustee for this company, the money expended for said property being furnished by the Wabash, St. Louis & Pacific Railway Company, and

Whereas, under an agreement between this company and the Wabash St. Louis & Pacific Railway Company, and others it was intended that said property standing in the name of James F. How, Trustee, should be transferred to the Des Moines, Union Railway Company, under certain conditions it is hereby

Resolved, that James F. How is requested by this company to transfer to the Des Moines Union Railway Company the property referred to above, so purchased, on receiving from said company a stipulation that as soon as practicable after the transfer said Union Railway Co. is to deliver to him first mortgage bonds of that company to the amount of the money advanced for the payment of said property and improvements with interest on same and taxes paid thereon and also three fourths of the stock of the Des Moines Union Railway Company: Said Bonds and stock to be transferred by said How to the Purchasing Committee of the Wabash St. Louis & Pacific Ry. Co. or their successors or assigns in lieu for the money advanced by said Company to make the purchase of above property and improvements, and the payment of taxes for this company.

Said motion having been duly considered was unanimously adopted.

On Motion of John S. Runnells the following resolution was unanimously adopted, to-wit:

Whereas Grenville M. Dodge has prior to 1881 and since then purchased certain property, and made expenditures on the same as Trustee for this Company, the money expended for said property being furnished by the said Dodge, and

Whereas under an agreement between this company, and the Wabash St. Louis & Pacific Railway Company, and others it was intended that said property standing in the name of Grenville M. Dodge, Trustee, and Grenville M. Dodge individually should be transferred to the Des Moines Union Railway Company under certain conditions, it is hereby

Resolved, That Grenville M. Dodge is requested by this company to transfer to the Des Moines Union Railway Company, the property referred to above on receiving from said company a stipulation that as soon as practicable said Union Railway Company is to deliver to him first mortgage bonds of that company to the amount of the money advanced by him, for the payment of said property and improvements with interest on

the same and taxes, and also one fourth of the Capital Stock of the Des Moines Union Railway Company.

James F. How offered the following resolution, to-wit:

Resolved that the President and Secretary of this company, be and they are hereby authorized and directed to execute to the Des Moines Union Railway Company a deed conveying to it all its real estate rights of way, franchise, road bed and other property of said company lying and being in the City of Des Moines, east of Farnham street, whether the same was acquired by grant from city of Des Moines or by purchase or condemnation, this resolution being offered for the purpose of carrying out the contract of date January second, 1882, entered into by and between this company, the Des Moines North Western Railway Company, the St. Louis Des Moines and Northern Railway Company and others.

Said motion having been duly considered was unanimously adopted.

There being no other business before the meeting it adjourned.

F. M. HUBBELL, Secretary.

Plffs. Exhibit No. 13.

Notice served by Des Moines and St. Louis Railroad Company on the Des Moines Union Railway Company, November 8th, 1887, being "Exhibit I" to Bill.

November 8th, 1887.

To The Des Moines Union Railway Co.,

This is to notify you that the Board of Directors of the Des Moines & St. Louis Railroad Co., at its meeting, November 8th, 1887, did pass the following resolutions, to-wit:

"Whereas, James F. How, has, prior to 1881 and since then, purchased certain property and made expenditures on same, as Trustee, for this Company, the money expended for said property being furnished by the Wabash, St. Louis & Pacific Railway Company, and

Whereas, under an agreement between this Company and the Wabash, St. Louis & Pacific Railway Co., and others, it was intended that said property standing in the name of James F. How, Trustee, should be transferred to the Des Moines Union Railway Company, under certain conditions, it is hereby

Resolved, That James F. How is requested by this Company to transfer to the Des Moines Union Railway Company the property referred to above, so purchased, on receiving from said Company a stipulation that, as soon as practicable after the transfer, said Union Railway Company is to deliver to him, first mortgage bonds of that Company, to the amount of the money advanced for the payment of said property and improvements, with interest on same and taxes paid thereon, and also three-fourths of the stock of the Des Moines Union Railway Company; said bonds and stock to be transferred by said How to the Purchasing Committee of the Wabash, St. Louis & Pacific Railway Company, or their successors or assigns, in lieu for the money advanced by said Company to make the purchase of above property and improvements and the payment of taxes for this Company."

"Whereas, Grenville M. Dodge, has, prior to 1881, and since then, purchased certain property and made expenditures on the same, as Trustee for this Company, the money expended for said property being furnished by the said Dodge, and

Whereas, under an agreement between this Company and the Wabash, St. Louis & Pacific Railway Co., and others, it was intended that said property standing in the name of Grenville M. Dodge, Trustee, and Grenville M. Dodge individually, should be transferred to the Des Moines Union Railway Co., under certain conditions, it is hereby

Resolved, That Grenville M. Dodge is requested, by this Company, to transfer to the Des Moines Union Railway Company the property referred to above, on receiving from said Company a stipulation that, as soon as practicable, said Union Railway Company is to deliver to him first mortgage bonds of that Company, to the amount of the money advanced by him for the payment of said property and improvements, with interest on the same and taxes, and also one-fourth of the capital stock of the Des Moines Union Railway Company."

Resolved, That the President and Secretary of this Company be, and they are hereby, authorized and directed to execute to the Des Moines Union Railway Company a deed conveying to it all of its real estate, rights of way, franchise, road-bed and other property of said Company, lying and being in the City of Des Moines, East of Farnham Street, whether the same was acquired by grant from the City of Des Moines, by purchase or condemnation, this resolution being offered for the purpose of carrying out the contract of date of January 2nd, 1882, entered into by and between this Company, The Des Moines Northwestern Railway Company, The St. Louis, Des Moines & Northern Railway Company and others."

And I hereby certify that the above is a true copy of the same.

Secretary of the D. M. & St. Louis Railroad Co.

Plffs. Exhibit No. 14.

Notice served by St. Louis, Des Moines and Northern Railway Company on Des Moines Union Railway Company, November 8th, 1887, being "Exhibit J" to Bill.

To the Des Moines Union Railway Company:

You are hereby notified that the Board of Directors of the St. Louis, Des Moines & Northern Railway Company did, at its meeting, held in Des Moines, Iowa, on the 5th day of November, 1887, pass the two following resolutions, to-wit:

"Whereas, James F. How has, prior to 1881, and since then, purchased certain property and made expenditures on same, as Trustee for this Company, the money expended for said property being furnished by the Wabash, St. Louis & Pacific Railway Company, and

Whereas, under an agreement between this Company and the Wabash, St. Louis & Pacific Railway Co., and others, it was intended that said property, standing in the name of James F. How, Trustee, should be transferred to the Des Moines Union Railway Company, under certain conditions, it is hereby

Resolved, That James F. How is requested, by this Company, to transfer to the Des Moines Union Railway Company the property referred to above, so purchased, on receiving from said Company a stipulation that, as soon as practicable after the transfer, said Union Railway Company is to deliver to him first mortgage bonds of that Company to the amount of the money advanced for the payment of said property and improvements, with interest on same, and taxes paid thereon, and also three-fourths of the stock of the Des Moines Union Railway Company; said bonds and stock to be transferred by said How to the Purchasing Committee of the Wabash, St. Louis & Pacific Railway Company, or their successors or assigns, in lieu for the money advanced by said Company to make the purchase of above property and improvements and the payment of taxes for this Company.

No. 2. "Whereas, Grenville M. Dodge has, prior to 1881, and since then, purchased certain property and made expenditures on the same, as Trustee for this Company, the money expended for said property being furnished by the said Dodge, and

Whereas, under an agreement between this Company and the Wabash, St. Louis & Pacific Railway Company and others, it

was intended that said property standing in the name of Greenville M. Dodge, Trustee, and Greenville M. Dodge individually, should be transferred to the Des Moines Union Railway Company, under certain conditions, it is hereby

Resolved, That Greenville M. Dodge is requested, by this Company, to transfer to the Des Moines Union Railway Company the property referred to above, so purchased, on receiving from said Company a stipulation that, as soon as practicable, said Union Railway Company is to deliver to him First Mortgage Bonds of that Company, to the amount of the money advanced by him for the payment of said property and improvements, with interest and taxes on the same, and also one-fourth of the capital stock of the Des Moines Union Railway Company."

And I hereby certify that the foregoing pages contain true copies thereof.

November 8th, 1887.

Secretary of the St. Louis, Des Moines &
Northern Ry. Co.

Piffs, Exhibit No. 15.

Notice served by the Des Moines Northwestern Railway Company, on the Des Moines Union Railway Company, on November 8th, 1887, and being "Exhibit K" to Bill.

To The Des Moines Union Railway Company,

This is to notify you that the Board of Directors of the Des Moines Northwestern Railway Company, at its meeting held in Des Moines, Iowa, November 8th, 1887, did pass the following two resolutions, to-wit:

No. 1. "Whereas, James F. How has, prior to 1881, and since then, purchased certain property and made expenditures on the same, as Trustee for this Company, the money expended for said property being furnished by the Wabash, St. Louis & Pacific Railway Company, and,

Whereas, under an agreement between this Company and the Wabash, St. Louis & Pacific Railway Company and others, it was intended that said property, standing in the name of James F. How, Trustee, should be transferred to the Des Moines Union Railway Company, under certain conditions, it is hereby

Resolved, That James F. How is requested, by this Company, to transfer to the Des Moines Union Railway Company the property referred to above, so purchased, on receiving from said Company a stipulation that, as soon as practicable after the transfer, said Union Railway Company is to deliver to him

First Mortgage Bonds of that Company, to the amount of the money advanced for the payment of said property and improvements, with interest on same and taxes paid thereon, and also one-half of the stock of the Des Moines Union Railway Company; said bonds and stock to be transferred by said How to the Purchasing Committee of the Wabash, St. Louis & Pacific Railway Company, or their successors or assigns, in lieu for the money advanced by said Company to make the purchase of above property and improvements and the payment of taxes for this Company." No. 2. "Whereas, Grenville M. Dodge has, prior to 1881, and since, purchased certain property and made expenditures on the same, as Trustee for this Company, the money expended for said property being furnished by said Dodge, and

Whereas, under an agreement between this Company and the Wabash, St. Louis & Pacific Railway Company, and others, it was intended that said property, standing in the name of Grenville M. Dodge, Trustee, and Grenville M. Dodge individually, should be transferred to the Des Moines Union Railway Company, under certain conditions, it is hereby

Resolved, That Grenville M. Dodge is requested, by this Company, to transfer to the Des Moines Union Railway Company the property referred to above, so purchased, on receiving from said Company a stipulation that, as soon as practicable, said Union Railway Company is to deliver to him First Mortgage Bonds of that Company to the amount of money advanced by him for the payment of said property and improvements, with interest and taxes on the same, and also one-fourth of the capital stock of the Des Moines Union Railway Company."

And I hereby certify that the foregoing pages contain true copies thereof.

November 8th, 1887.

Secretary D. M. N. W. Ry. Co.

Plffs. Exhibit No. 16.

Ordinance City of Des Moines March 22nd 1881.

Des Moines & St. Louis Railroad.

An Ordinance Granting the right of way to the Des Moines & St. Louis Railroad Company and its assigns, over, across, along and upon certain Streets and Alleys in the City of Des Moines, Polk County, Iowa, and the right to bridge the Des Moines River on the south alley, in said City, between Court Avenue and Vine Street.

O. 216—P. March 22nd, 1881.

Section 1. Be it Ordained By the City Council of the City of Des Moines: That the right of way be and is hereby granted to the Des Moines & St. Louis Railroad Company or its assigns, through the City of Des Moines, on, over, along, upon and across the following streets and alleys, to-wit:

Commencing at the east end of Market Street in Brooks & Co's Addition and running thence west on Market Street, crossing Twenty-fourth Street, Twenty-third Street, Twenty-second Street, Nineteenth Street and Seventeenth Street, to the west line of East Eleventh Street. Thence westerly along and across Vine Street from East Eleventh Street to East Eight Street, and on, over and along the alleys in Blocks Twenty-one, twenty-two and twenty-three of Des Moines Addition, crossing East Twelfth Street, East Eleventh Street, East Tenth Street and East Ninth Street; thence west between Court Avenue and Vine Street, crossing all the streets and alleys between East Ninth Street and East Fourth Street. Thence westerly along the south alley between Court Avenue and Vine Street to West Fifth Street, crossing East Fourth Street, East Third Street, East Second Street and Front Street, Water Street, West Second Street, West Third Street, West Fourth Street and West Fifth Street, and across all north and south alleys between East Fourth Street and West Fifth Street. Thence westerly on the alley between Cherry Street and Vine Street, from West Fifth Street to Fourteenth Street or Section Street, crossing West Sixth Street, West Seventh Street, West Eighth Street, West Ninth Street, West Tenth Street, West Eleventh Street, West Twelfth Street, West Thirteenth Street and West Fourteenth Street, and crossing all the north and south alleys between West Fifth Street and West Fourteenth Street, with the right to lay down a single or double track, with side-tracks, turn-outs and switches on the same, and to run such locomotives and trains of cars over the same as may be necessary in the operation of said road, and at such reasonable rates of speed as may from time to time be fixed by said City Council of Des Moines; provided, that said railroad company shall build its road on the grade of the City, or upon such grade as may be agreed upon by the City and said railroad company. Provided, also, that the right of way hereby granted shall in no case be construed to cover or extend more than forty-eight feet in width where said road crosses the public streets and alleys.

Section 2. Be it Further Ordained, That the right to build and operate a railroad bridge over and across the Des Moines river on the south alley between Court Avenue and Vine

Street, in the City of Des Moines, is hereby granted to the Des Moines & St. Louis Railroad Company or its assigns.

Section 3. Be it further Ordained, That said railroad company shall, in constructing its road, build and keep in repair at Street and alley crossings sufficient wagon-ways of the full width of the Street or alley, crossings for foot passengers, and water-ways or culverts, wherever the same may be necessary and of sufficient number and size to afford at all times the free passage of water and public travel without obstruction, and increase the number and size of such wagon-ways and crossings, waterways or culverts within the limits of the City of Des Moines wherever and whenever a majority of the members of the City Council shall order or direct; provided, that when the tracks of said railway crosses any street or alley at any other than a right angle, the Company shall be required to lay down plank on either side of the track directly across said street or alley from the point of entrance thereto and departure therefrom.

Section 4. Be it further Ordained, That the grant hereinbefore made is upon the express condition that the injury to property abutting upon the streets and alleys upon which such railway tracks is proposed to be located and laid down, shall be ascertained and compensated at the time and in the manner provided by the Statutes of this State for taking private property for works of internal improvement.

Section 5. Be it further Ordained, That said grant is hereby made upon the further express condition that said railroad company shall locate, build and maintain a passenger depot in East Des Moines, also one in West Des Moines, and shall stop all passenger trains at said depots a sufficient length of time for passengers to get on and off the trains.

Section 6. Be it further Ordained, That the grant made in the first section of this ordinance is upon the express condition that the railroad of the Des Moines & St. Louis Railroad Company shall be built and its cars running into the City of Des Moines by the first day of January, 1882.

Section 7. Be it further Ordained, That this ordinance shall operate as a contract between the City of Des Moines and the said Des Moines & St. Louis Railroad Company, if the grant herein made shall be accepted by the said Des Moines & St. Louis Railroad Company, which acceptance shall be entered upon the records of the City Council.

Plffs. Exhibit No. 17.

Deed No. 1 from James F. How, Trustee, to Des Moines Union Railway Company, being "Exhibit L" to Amended Bill.

James F. How, Trustee,
to
Des Moines Union Ry. Co.

Deed.

Whereas, The property herein described was from time to time purchased with the moneys and funds of the Wabash, St. Louis and Pacific Railway Company a corporation; and Whereas for its convenience the legal title to said property was conveyed to me in trust; and Whereas said property was acquired and held for the purpose and upon the terms set forth in a certain contract made and entered into on or about the 2nd day of January, 1882, between the Des Moines & St. Louis Railway Company, the Des Moines Northwestern Railway Company; and the St. Louis, Des Moines & Northern Railway Company; G. M. Dodge, James F. How and James F. How, Trustee; and which contract was consented to by said Wabash, St. Louis and Pacific Railway Company; and Whereas I have heretofore at the request of said Wabash, St. Louis & Pacific Railway Company stated and declared in writing that I held the legal title to the real estate hereinafter described in trust for said Des Moines & St. Louis Railway Company and said Des Moines Northwestern Railway Company; and Whereas the Board of Directors of said Des Moines & St. Louis Railway Company and the Board of Directors of said Des Moines Northwestern Railway Company did, on or about the 8th day of November, 1887, pass certain resolutions containing among other things the following, to-wit:

"Whereas, James F. How, has prior to 1881, and since then purchased certain property and made expenditures on same as Trustee for this Company, the money expended for said property being furnished by the Wabash, St. Louis and Pacific Railway Company; and Whereas, under an agreement with this Company, and the Wabash, St. Louis and Pacific Railway Company and others, it was intended that said property standing in the name of James F. How, Trustee, should be transferred to the Des Moines Union Railway Company under certain conditions. It is hereby resolved, that James F. How is requested by this Company to transfer to the Des Moines Union Railway Company the property above referred to."

Now Therefore, Know All Men By These Presents:

That I, James F. How, Trustee, as aforesaid, of the City of St. Louis, State of Missouri, in consideration of the premises,

427

THE DES MOINES UNION RY. CO., ET AL.

and of the sum of One Dollar, to me in hand paid by the Des Moines Union Railway Company, the receipt whereof is hereby acknowledged, have granted, bargained, sold and conveyed, and by these presents I do hereby grant, bargain, sell and convey unto the said Des Moines Union Railway Company, the several lots or pieces and parcels of ground situated, lying and being in the City of Des Moines, County of Polk, State of Iowa, particularly described as follows:

Official Plat Lot Three (3) in the northwest quarter of Section (9) Township Seventy-eight (78) Range Twenty-four (24) West of the 5th P. M. Iowa; Lot six, and the south half of Lot five in Block twenty-two (22) Lots five (5) and seven (7) and the south sixty-six (66) feet of Lot One (1) and two (2) and the south half of Lot three (3) all in Block thirty-one (31); Lots One (1) two (2) three (3) four (4) five (5) six (6) seven (7) in Block thirty-two (32) all in Keene & Poindexter's Addition to Fort Des Moines; Lot three, Block Fourteen, and Lot five and six in Block fourteen Lots five and six and the north two-thirds of Lots seven, in Block 18, Lot Three (3) in Block Twenty-two, Lot three and the west half of Lot five (5) and six (6) in Block Nine, all in Hoxies Addition to the Town of Fort Des Moines; Lot nine and the north two-thirds of Lot four in Block thirty-five (35); Lot four (4) and the north two-thirds of Lot Nine (9) in Block thirty (30); Lots four (4) and the south two-thirds of Lot Nine (9) in Block twenty-five (25); Lot nine and the south one-third of Lot ten (10) less a strip four feet in width from the north side of said one-third and the south one-third of Lot three (3) in Block Twenty (20); Lots one (1) two (2) seven (7) and eight (8) in Block fifteen (15); Lots One (1) two (2) and leasehold interest seven (7) and eight (8) in Block Nine (9); Lot two (2) in Block four (4) all in the original town of Fort Des Moines; Lots five (5) and six (6) in Block D, Lot Twelve (12) in Block I, Lots three (3) and twelve (12) in Block three (3) all in Scott & Dean's Addition to Fort Des Moines. The right of way in the rear of Lot seven (7) in Block Fourteen (14) beginning at the west line of Seventh Street and extending westward ninety-nine feet; Lots seven (7) and fifteen (15) in Block Sixteen (16); Lots Twelve (12) and thirteen (13) in Block Eleven (11); Lots ten (10) and eleven (11) in Block Twelve (12); Lots one (1) and nine (9) and official Plat Lot eleven (11) in Block Twenty-one (21); all interest in alley adjoining Lots One (1) and two (2) in Block thirteen (13); Lots eight (8) nine (9) fifteen (15) and sixteen (16) in Block Thirteen (13); Lot fifteen (15) in Block fifteen (15); the undivided one-fourth of Lot two (2) and

official plat lot thirteen (13) in Block Twenty-two (22); lots three (3) four (4) five (5) six (6) seven (7) and eight (8) in Block twenty-three (23) all in the Town of Des Moines; Lot twenty-three (23) north two and seventy-five one hundredths acres of Block forty (40) west one-third (now official Plat Lot One) of Block forty-five (45), all of Lot thirty-six (36) all in Brooks and Company's Addition to the City of Des Moines.

To Have and to Hold all and singular the several pieces and parcels of real estate aforesaid, with all the appurtenances thereunto belonging unto the said Des Moines Union Railway Company, a corporation, and its assigns forever. It is expressly understood, however, that I only undertake to convey such title as I may have in said premises, and that I only undertake to warrant and defend against those claiming through and under me.

In Testimony Whereof, I have hereunto set my hand and seal this 19th day of November, A. D. One Thousand Eight Hundred and eighty-seven.

JAMES F. HOW.

City of St. Louis,
State of Missouri—ss.

On this sixteenth day of April, A. D. 1888, before me, a Notary Public within and for the City of St. Louis and State of Missouri, personally appeared James F. How, to me personally known to be the identical person whose name is affixed to the within and foregoing instrument of writing as grantor therein, and who acknowledged that he executed the same as his voluntary act and deed.

In Testimony Whereof I have hereunto set my hand and affixed my official seal at my office in said City of St. Louis, the day and year first above written. My term expires June 29th, 1889.

(Notarial Seal)

MILLARD F. WATT.
Notary Public, City of St. Louis, State of Missouri.

Plffs. Exhibit No. 18.

Being "Exhibit M" to Amended Bill.

James F. How & Wife
To
Des Moines Union Ry. Co.

Deed.

Whereas, the property herein described was from time to time purchased with the moneys and funds of the Wabash, St.

Louis and Pacific Railway Company, a corporation; and Whereas, for its convenience the legal title to said property was conveyed to me in trust; and Whereas, said property was acquired and held for the purposes and upon the terms set forth in a certain contract made and entered into on or about the 2nd day of January, 1882, between the Des Moines and St. Louis Railway Company; the Des Moines Northwestern Railway Company and the St. Louis, Des Moines & Northern Railway Company, G. M. Dodge, James F. How and James F. How, Trustee, and which contract was consented to by said Wabash, St. Louis and Pacific Railway Company; and Whereas, I have heretofore at the request of said Wabash, St. Louis & Pacific Railway Company stated and declared in writing, that I held the legal title to the real estate herein-after described in trust, for said Des Moines and St. Louis Railway Company and said Des Moines Northwestern Railway Company; and Whereas the Board of Directors of said Des Moines and St. Louis Railway Co. and the Board of Directors of said Des Moines Northwestern Railway Company did on or about the 8th day of November, 1887, pass certain resolutions containing among other things the following, to-wit:

"Whereas James F. How has prior to 1881, and since then purchased certain property and made expenditures on same as trustee for this Company, the money expended for said property being furnished by the Wabash, St. Louis and Pacific Railway Company, and Whereas, under an agreement between this Company and the Wabash, St. Louis and Pacific Railway Company and others, it was intended that said property standing in the name of James F. How, Trustee, should be transferred to the Des Moines Union Railway Company under certain conditions It is hereby resolved that James F. How is requested by this Company to transfer to the Des Moines Union Railway Company the property above referred to."

Now Therefore, Know all men by these Presents, That I James F. How of the City of St. Louis, State of Missouri, in consideration of the premises and of the sum of One Dollar to me in hand paid by the Des Moines Union Railway Company, the receipt whereof is hereby acknowledged, have granted, bargained and sold, and by these presents I do grant, bargain and sell and convey unto the Des Moines Union Railway Company the several Lots or pieces and parcels of ground situated, lying and being in the City of Des Moines, County of Polk, State of Iowa, particularly described as follows: Lot one (1) of the Official Plat of Lot Twenty-four (24) and Lot Two (2) of the Official Plat of Lot Twenty-five (25) and Lot One (1) of the Official Plat of Lot twenty-six (26), all in Brook

and Company's Addition to the City of Des Moines; and the east one-half ($\frac{1}{2}$) of Lot two (2) in Block fifteen (15) in the original town of Fort Des Moines; also the right of way in alley adjoining Lots One (1) and Two (2) in Block Thirteen (13) in the Town of Demoiné, and Lot Nine (9) in Block Twelve (12) in the town of Demoiné, now a part of the City of Des Moines, and Eliza A. How, wife of the said James F. How, hereby relinquishes her right of dower in and to the above described premises.

To Have And To Hold all and singular the several pieces and parcels of real estate aforesaid with all the appurtenances thereunto belonging unto the said Des Moines Union Railway Company, a corporation and its assigns forever. It is expressly understood, however, that I only undertake to convey such title as I may have in said premises, and that I only undertake to warrant and defend against those claiming through and under me.

In Testimony Whereof I hereunto set my hand and seal this tenth day of December, A. D. One Thousand Eight Hundred and Eighty-seven.

(Seal)

JAMES F. HOW,

(Seal)

ELIZA A. HOW.

State of Missouri,
City of St. Louis—ss.

On this Seventeenth day of April, 1888, before me, a Notary Public within and for the City of St. Louis and State of Missouri, personally appeared James F. How and Eliza A. How, his wife, to me personally known to be the identical persons whose names are affixed to the within and foregoing instrument of writing as grantors therein, and who acknowledged that they executed the same as their voluntary act and deed.

In Testimony Whereof I have hereunto set my hand and affixed my official seal at my office in said City of St. Louis, the day and year first above written. My term expires June 29th, 1889.

(Notarial Seal)

MILLARD F. WATTS,
Notary Public, City of St. Louis,
State of Missouri.

Filed for Record April 27th, 1888, at 12 o'clock M.

D. C. BISHARD, Recorder.

State of Iowa,
Polk County—ss.

I, Mrs. Frank W. Dodson, Recorder of said County, hereby certify that the foregoing is a copy from the original record

in my office, and of the whole thereof, and recorded in Book 201, page 176.

Dated at Des Moines, Iowa, in said County, this the ninth day of April, 1910.

MRS. FRANK W. DODSON, Recorder.
....., Deputy.

Plffs. Exhibit No. 19.

Deed from James F. How, Trustee, being "Exhibit N" to Amended Bill.

James F. How, Trustee,
To
Des Moines Union Railway Co.

Warranty Deed.

Whereas, the property hereinafter described was purchased with the moneys and funds of the Wabash, St. Louis and Pacific Railway Company a corporation; and whereas, for its convenience the legal title to said property was conveyed to me in trust; and whereas said property was acquired, and held for the purpose and upon the terms set forth in a certain contract made, and entered into on or about the 2nd day of January 1882, between the Des Moines & St. Louis Railway Company; the Des Moines Northwestern Railway Company, and the St. Louis, Des Moines and Northern Railway Company, G. M. Dodge, James F. Howe and James F. Howe, Trustee, and which contract was consented to by said Wabash, St. Louis and Pacific Railway Company, and whereas, I have heretofore at the request of said Wabash, St. Louis and Pacific Railway Company, stated and declared in writing that I held the legal title to the real estate hereinafter described, in trust, for said Des Moines & St. Louis Railway Company, and said Des Moines Northwestern Railway Company, and whereas the Board of Directors of said Des Moines & St. Louis Railway Company, and the Board of Directors of said Des Moines Northwestern Railway Company did, on or about the 8th day of November 1887 pass certain resolutions containing among other things the following, to-wit.

Whereas James F. How, has prior to 1881, and since then purchased certain property and made expenditures on same as trustee for this Company, the money expended for said property being furnished by the Wabash, St. Louis and Pacific Railway, Company, and whereas, under an agreement with this Company and the Wabash, St. Louis & Pacific

Railway Company, and others, it was intended that said property standing in the name of James F. How, Trustee and should be transferred to the Des Moines Union Railway Company, under certain conditions. It is hereby Resolved that James F. How, is requested by this Company to transfer to the Des Moines Union Railway Company, the property above referred to. Now therefore, Know all men by these Presents that I, James F. How, as Trustee aforesaid of the City of St. Louis, State of Missouri, in consideration of the premises and of the sum of one dollar to me in hand paid by the Des Moines Union Railway Company, the receipt whereof is hereby acknowledged, have granted, bargained sold and conveyed, and by these presents I do hereby grant, bargain, sell and convey unto the said Des Moines Union Railway Company a strip of land fifty (50) feet in width lying north of and adjoining the north line of the right of way of the Chicago, Rock Island & Pacific Railway, and being part of lot two (2) of the official plat of the north west quarter of the northeast quarter of Section eight (8) Township seventy-eight (78) north Range twenty-four west 5th P. M. lying and being in the city of Des Moines, County of Polk, State of Iowa. To have and to hold all and singular the several pieces and parcels of real estate aforesaid, with all the appurtenances thereunto belonging unto the said Des Moines Union Railway Company a corporation, and its assigns forever. It is expressly understood, however, that I only undertake to convey such title as I may have in said premises, and that I only undertake to warrant and defend against those claiming through and under me. In Testimony whereof I have hereunto set my hand and seal this 28th day of April, A. D. one thousand eight hundred and eighty eight.

JAMES F. HOW.

State of Missouri,

City of St. Louis—ss.

On this 28th day of April A. D. 1888, before me, a Notary Public, within and for the City of St. Louis and State of Missouri, personally appeared James F. How, to me personally known to be the identical person whose name is affixed to the within and foregoing instrument of writing, as grantor therein, and who acknowledged that he executed the same as his voluntary act and deed.

In testimony whereof I have hereunto set my hand and affixed my official seal at my office in said City of St. Louis the day and year, first above written.

(Notarial Seal)

MILLARD F. WATTS,

Notary Public, City of St. Louis.

My Term expires June 29th, 1889.

Filed for record May 1, 1888, at 3:40 o'clock P. M.

D. C. BISHARD,

Recorder.

State of Iowa,

County of Polk—ss.

I, Mrs. Frank W. Dodson, Recorder of said County hereby certify that the foregoing is a copy from the original in my office, and of the whole thereof, and recorded in Book 201 page 187.

Dated at Des Moines, Iowa, in said County, this Ninth day of April 1910.

MRS. FRANK W. DODSON,

Recorder,

Deputy.

Plffs. Exhibit No. 20.

G. M. Dodge & Wife To Des Moines Union Ry Co., being "Exhibit O" to Amended Bill.

Quit-Claim Deed.

This Indenture, made the Seventh day of November in the year one thousand eight hundred and eighty seven, Between G. M. Dodge and Annie Dodge his wife, of Pottawattamie County, State of Iowa, parties of the first part and the Des Moines Union Railway Company, parties of the second part, Witnesseth;

That the said party of the first part for and in consideration of the sum of One dollar and other valuable considerations, lawful money of the United States of America, to them in hand paid by the said parties of the second part at or before the ensealing and delivery of these presents the receipt whereof is hereby acknowledged, have remised, released and Quit Claimed, and by these presents doth remise, release, and Quit-Claim unto the said parties of the second part, and to their heirs and assigns forever, all of the following described premises situated within the County of Polk and State of Iowa, to-wit: Lots numbered one and two in Block numbered twenty-two in H. M.

Hoxies Addition to the Town of Fort Des Moines now included in the corporate limits of the City of Des Moines.

Together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging, or in any wise appertaining and the reversion and reversions, remainder and remainders, rents, issues and profits thereof, and also, all the estate, right, title and interest in the above described property possession, claim and demand whatsoever, as well in law as in equity, of the said part of the first part of, in or to, the above described premises and every part and parcel thereof, with the appurtenances. To have and to hold all and singular the above mentioned and described premises, together with the appurtenances unto the said parties of the second part and assigns forever.

In Witness Whereof the said parties of the first part have hereunto set their hands and seals the day and year first above written.

Scaled and Delivered in the
presence of

J. T. GRANGER,

L. F. BARTELS.

G. M. DODGE,
ANNIE DODGE.

State of New York,
City of New York,
County of New York—ss.

On the ninth day of November in the year one thousand and eight hundred and eighty seven, before me personally came G. M. Dodge to me known and known to me to be the individual described in, and who executed the foregoing instrument, and acknowledged that he executed the same.

Witness my hand and notarial seal this ninth day of November,
A. D. 1887.

(Notarial Seal)

HENRY E. WALLACE,
Notary Public.
New York Co. #172.

State of Colorado,
County of Arapahoe—ss.

On the fifteenth day of November in the year one thousand and eight hundred and eighty seven, before me personally came Annie Dodge to me known to be the individual described in and who executed the foregoing instrument and acknowledged that she executed the same.

Witness my hand and notarial seal this fifteenth day of November, A. D. 1887. My Commission expires August 1st, 1888.

(Notarial Seal)

LOUIS F. BARTELS,
Notary Public.

Filed for Record April 26, 1888, at 4 o'clock P. M.

D. G. BISHARD, Recorder.

State of Iowa,

County of Polk—ss.

I, Mrs. Frank W. Dodson, Recorder of said County, hereby certify that the foregoing writing is a copy from the original record in my office, and of the whole thereof, and recorded in book 201, page 171.

Dated at Des Moines, Iowa, in said County, this 8th day of April, 1910.

MRS. FRANK W. DODSON,
Recorded.
Deputy.

Piffs. Exhibit No. 21.

Deed from St. Louis & Des Moines & Northern Ry. Co., to
Des Moines Union R. Co.

St. Louis, Des Moines & Northern Railway Company
to

Des Moines Union Railway Company.

Quit-Claim Deed.

This Indenture, made the Seventh day of November, in the year One Thousand Eight Hundred and Eighty-seven, between The St. Louis, Des Moines and Northern Railway Company of the County of Polk and State of Iowa, parties of the first part, and the Des Moines Union Railway Company, parties of the second part, Witnesseth, That the said party of the first part, for and in consideration of the sum of One Dollar and other valuable considerations, lawful money of the United States of America, to them in hand paid by the said parties of the second part, at or before the encsaling and delivery of these presents, the receipt whereof is hereby acknowledged, have remised, released and quit-claimed, and by these presents doth remise, release and Quit-claim unto the said parties of the second part, and to their heirs and assigns forever, all of the following described premises situated in the County of Polk and State of Iowa, to-wit: Lots Seven (7) and eight (8) in Block Twenty-two (22) of Keene and Poindexter's Addition and fractional lot eight (8) in Block Twenty-two (22) of Hoxie's

Addition, all subject to the right of way of the Chicago, Rock Island and Pacific Railway Company over the same; also Lot six (6) in Block thirty-one (31) and Lots five (5) six (6) seven (7) eight (8) and nine (9) in Block thirty-three, all in Keene and Poindexter's Addition to Fort Des Moines; also Official Plat Lot Five (5) in the northeast quarter of Section eight (8) and Official Plat Lots two (2) and thirteen (13) in northwest quarter of Section Nine (9), all in Township seventy-eight (78) Range Twenty-four (24) West 5th P. M. Iowa, all included in the corporate limits of the City of Des Moines. Together with all and singular the tenements, hereditaments and appurtenances thereunto belonging, or in any wise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof. And also, all the estate, right, title, interest in the above described property, possession, claim and demand whatsoever, as well in law as in equity of the said parties of the first part, of, in or to the above described premises, and every part and parcel thereof, with the appurtenances. To Have and to Hold all and singular the above mentioned and described premises together with the appurtenances, unto the said parties of the second part and assigns forever.

In Witness Whereof the said parties of the first part have hereunto set their hand and seals the day and year first above written.

THE ST. LOUIS, DES M. & N. RY. CO.,
By G. M. Dodge, President.

Sealed and delivered
in the presence of
J. T. Granger.

State of New York,
City of New York,
County of New York—ss.

On the ninth day of November, in the year One Thousand Eight Hundred and Eighty-seven, before me personally came G. M. Dodge, to me known and known to me to be the individual described in and who executed the foregoing instrument and acknowledged that he executed the same.

Witness my hand and Notarial seal this ninth day of November, A. D. 1887.
(Notarial Seal)

HENRY E. WALLACE,
Notary Public, New York Co. #172

Filed for record April 26, 1888, at 4 o'clock P. M.

C. D. BISHARD, Recorder.

State of Iowa,

Polk County—ss.

I, Mrs. Frank W. Dodson, Recorder of said County, hereby certify that the foregoing writing, is a copy from the original record in my office, and of the whole thereof, and recorded in Book 201, page 173.

Dated at Des Moines, Iowa, in said County, this the day of 19....

....., Recorder.

....., Deputy.

Filed April 26, 1888, Book 201, page 173.

Plffs. Exhibit No. 22.

Devel from Des Moines & St. Louis Railroad Co. to Des Moines Union Ry. Co.

Des Moines and St. Louis Railroad Company

To

Des Moines Union Ry. Company.

Warranty Deed.

Know All Men By These Presents, That the Des Moines and St. Louis Railroad Company, a corporation organized and existing under and by virtue of the laws of the State of Iowa, for and in consideration of One Dollar, to it paid by the Des Moines Union Railway Company, a corporation organized and existing under and by virtue of the laws of the State of Iowa, the receipt whereof is hereby acknowledged, does hereby sell and convey unto the said Des Moines Union Railway Company, the following described premises, franchises and real estate, situated in the City of Des Moines, Polk County, Iowa.

Official Plat Lot Twelve (12) in Block twenty-two (22) Demoine; Lot two (2) in Block twenty-two (22) Demoine; Lot ten (10) in Block twenty-one (21) Demoine; Lots thirteen (13) and fourteen (14) in Block twelve (12) Demoine; Lots eight (8) and fifteen (15) in Block fifteen (15) Demoine; Lot eight (8) in Block Sixteen (16) Demoine; Lot three (3) in Block "I" Scott and Deans Addition; Lot Twelve (12) in Block "D" Scott and Dean's Addition; Lot four (4) in Block Thirty (30) Fort Des Moines; Lot seven (7) in Block Nine (9) Fort Des Moines; Lot Two (2) in Block Nine (9) Fort Des Moines; Lot Two (2) in Block four (4) in Fort Des Moines; East one-half ($\frac{1}{2}$) of Lot six (6) in Block Nine (9) Hoxie's Addition; Lot three (3) in Block Eighteen (18) Hoxie's

Addition; south one-half ($\frac{1}{2}$) of Lot Five (5) in Block twenty-two (22) Keene and Poindexter's Addition; south one-half ($\frac{1}{2}$) of Lots One (1) Two (2) and three (3) in Block thirty-one (31) Keene and Poindexter's Addition; North part of Lot thirty-nine in Brooks and Co's Addition. And all of the real estate within the City of Des Moines, Iowa, which is the property of the grantor, together with all real estate which may hereafter be acquired by this grantor either by condemnation proceedings or otherwise. Also all its embankments, bridges, turnouts, side-tracks, buildings and structures, water tanks and fixtures, shops, engine and other houses, depots turntables and all its railroad property acquired and to be acquired, and everything appurtenant to said railroad, and all franchises and rights it may have acquired by grant, donation, purchase or otherwise, and particularly all rights, franchises and privileges granted by the City of Des Moines, Iowa, under an ordinance "granting the right of way to the Des Moines and St. Louis Railroad Company and its assigns, over, across, along and upon certain streets and alleys in the City of Des Moines, Iowa, and the right to bridge the Des Moines River on the south alley in said City between Court Avenue and Vine Streets." And the said Des Moines and St. Louis Railroad Company hereby covenants to Warrant and Defend the said premises against all the lawful claims of all persons whomsoever, claiming by, through or under it. Signed this 21st day of February, A. D. 1888.

In Witness Whereof the said Des Moines and St. Louis Railroad Company has caused these presents to be signed in its corporate name by its President and attested by its Secretary, and has caused the corporate seal of said Company to be hereunto affixed as authorized, the date and year last above written.

(Corporate Seal) **THE DES MOINES AND ST. LOUIS RAILROAD COMPANY,**
By J. S. Clarkson, President.

Attest: F. M. Hubbell,
Secretary.

State of Iowa,
County of Polk—ss.

Be It Remembered that on this 21st day of February, 1888, before me, the undersigned Notary Public, within and for the County of Polk and State of Iowa, came J. S. Clarkson, President, and F. M. Hubbell, Secretary of the Des Moines and St. Louis Railroad Company, who are personally known to me to be the identical persons whose names are affixed to the within and foregoing instrument of writing as President

and Secretary respectively of said Des Moines and St. Louis Railroad Company, and who acknowledged the same to be their voluntary act and deed as President and Secretary, respectively, of said Des Moines and St. Louis Railroad Company, party thereto. And said J. S. Clarkson, President, further acknowledged that said instrument was executed by him in behalf of said corporation by authority of its Board of Directors and that he executed the same as the voluntary act and deed of said Des Moines and St. Louis Railroad Company for the uses and purposes therein mentioned. And said F. M. Hubbell, Secretary, as aforesaid, further acknowledged that said instrument was assigned and sealed by him in behalf of said corporation by authority of its Board of Directors, and he executed the same as the voluntary act and deed of said Des Moines and St. Louis Railroad Company for the uses and purposes therein mentioned.

In Testimony Whereof I have hereunto set my hand and affixed my official seal at my office in Des Moines, in the County of Polk, and State of Iowa, this 21st day of February, 1888.

(Notarial Seal)

JNO. S. POLK,

Notary Public, County of Polk, State of Iowa.

Filed for Record April 26, 1888 at 4 o'clock P. M.

D. C. BISHARD, Recorder.

State of Iowa,

Polk County—ss.

I, Mrs. Frank W. Dodson, Recorder of said County, hereby certify that the foregoing writing is a copy from the original record in my office, and of the whole thereof, and recorded in Book 201, page 174.

Dated at Des Moines, Iowa, in said County, this the Ninth day of April, 1910.

MRS. FRANK W. DODSON,

Recorder,

Deputy.

Piffs. Exhibit No. 23.

Mortgage of Des Moines Union Ry. Co.,

To

Central Trust Company of New York.

Dated November 1st, 1887.

This Indenture, made and entered into this first day of November, A. D. 1887, by and between the Des Moines Union

Railway Company, a corporation duly organized and existing under the laws of the State of Iowa, party of the first part, and the Central Trust Company of New York as trustee, party of the second part,

Witnesseth:

Whereas: The Des Moines Union Railway Company is a corporation duly organized and existing under the laws of the State of Iowa, and as such is fully authorized to locate, construct, own and operate a railway in, around and about the City of Des Moines, Iowa, including the construction, ownership and use of depots, freight houses, railway shops, repair shops, stock yards and whatever may be useful and convenient for the operation of railways in said city, and the transfer of cars from the lines and depots of one railway to another, and from said depots to the various manufactories, warehouses, storehouses or elevators, and from one manufactory, warehouse, storehouses or elevator to another, as said depots, manufactories, warehouses, storehouses and elevators are now constructed or may be hereafter constructed in or around the said City of Des Moines, Iowa, and for such purposes has full right to acquire by purchase and condemnation all such right of way, land and lots as are necessary and proper for the operation and construction of such line of railroad, and to provide itself with depot grounds, yards, shops and other terminal facilities adequate for handling the traffic to be transported upon such railroad, and

Whereas, the Des Moines Union Railway Company has undertaken and partially completed the construction of a railroad in the City of Des Moines, Polk County, Iowa, extending from the main lines of the Des Moines & St. Louis Railway Company, the Des Moines Northwestern Railway Company and the St. Louis Des Moines & Northern Railway Company to a connection with and across the lines of various other railroads which center or terminate in the said City of Des Moines, and to various manufactories and industries in said city, and has purchased and owns various structures and buildings used for depots, railway shops, round houses and other structures suitable and useful for railway purposes, and has purchased, acquired and owns by condemnation and otherwise, valuable real estate in said city, and valuable franchises from the City Council of said city, and

Whereas, for the purpose of paying for the property aforesaid, aiding in the construction and extension of said railway, perfecting the title to said property, and completing all necessary and desirable improvements thereto and thereon, said party of the first part proposes to issue its bonds to the

amount of eight hundred thousand (\$800,000) dollars, to be dated on the 1st day of November, 1887, in accordance with the resolutions and orders of its Board of Directors at a duly called and authorized meeting thereof; the said bonds to be authenticated by a certificate signed by said party of the second part, and which bonds with their certificates and interest coupons annexed, are to be in substantially the form following, to-wit:

\$1,000.

No.——.

United States of America.

The Des Moines Union Railway Co.
First Mortgage Bond.

Thirty years after date, for value received, the Des Moines Union Railway Company, a corporation of the State of Iowa, promises to pay at its financial agency in the City of New York to the holder of this bond, or in case this bond be registered, then to the registered owner thereof, one thousand dollars in gold coin of the United States, of the present standard of value; also interest thereon at the rate of five per centum per annum, payable semi-annually in like gold coin, on the first days of May and November in each year, on the presentation and surrender of the proper interest coupons hereto annexed as they severally become due.

This bond is one of a series of eight hundred bonds for the sum of one thousand dollars each, the payment of the principal and interest of which is secured by an indenture of mortgage of even date herewith, conveying to the Central Trust Company of New York, as trustee, the entire railway franchises, property and income of said Des Moines Union Railway Company, and is a first lien thereon. The issue of bonds under said mortgage is limited to the sum of eight hundred thousand dollars.

If default shall be made in the payment of any semi-annual installment of interest on this bond, or any bond of this series, when the same shall become due and be demanded, and shall remain unpaid for six months after such demand, the principal of said bond shall become due and payable in the manner provided in said mortgage. Payment of this bond is secured by mortgage on all the property now owned or hereafter acquired by the Des Moines Union Railway Company, but neither the officers nor stockholders of the company are to be held individually liable thereon by reason of their acts herein, or their subscriptions to the capital stock of said company.

Said company hereby waives the benefit of any extension, stay or appraisal laws now in force or that may hereafter be enacted. This bond is not to be valid until authenticated by a certificate endorsed thereon, signed by said Central Trust Company, of New York, trustee, to the effect that it is one of the bonds secured by said mortgage and is issued in conformity with its provisions.

This bond shall pass by delivery or by transfer on the books of the company, in the City of New York; but after registration of ownership, certified hereon by the transfer agent of said company, no further transfer, except on the books of the company, shall be valid, unless transferred to bearer on said books, after which this bond shall pass by delivery as at first, but it shall continue subject to registration and transfer to bearer successively at the option of each holder.

In Witness Whereof, the said Des Moines Union Railway Company has caused its corporate name to be hereunto signed by its President, and its corporate seal to be hereunto affixed, attested by its Secretary, and the annexed interest coupons to be executed with the engraved signature of its Treasurer, this, the first day of November, A. D. 1887.

DES MOINES UNION RAILWAY COMPANY,

By
President.

Attest:

.....
Secretary.

(Form of Coupon.)

On the first day of A. D. 188., the Des Moines Union Railway Company will pay the bearer, at its financial agency in the City of New York, twenty-five dollars, in gold coin of the United States, being interest for six months on bond No.

(Form of Trustee's Certificate.)

This is to certify that this bond is one of the series of eight hundred bonds for one thousand dollars each, secured by and mentioned in the mortgage within referred to.

CENTRAL TRUST COMPANY OF NEW
YORK, Trustee.

By
President.

Now this Indenture witnesseth, that the party of the first part, in consideration of the premises, and for the purpose of securing the payment of the principal and interest of all bonds which shall be made, executed and issued in accordance with the provisions of this mortgage, as the same shall become due and payable from time to time according to the tenor and effect thereof, and of the sum of one dollar lawful money of the United States, unto it well and truly paid by the said Central Trust Company of New York, trustee, at the time of the execution hereof, the receipt whereof is hereby acknowledged, has granted, bargained, sold, conveyed and confirmed, assigned and set over, and by these presents said Des Moines Union Railway Company does grant, bargain, sell, convey and confirm, assign and set over, unto the said Central Trust Company of New York, as trustee aforesaid, and to its lawful successor or successors in the trust hereby created, and its assigns forever, all and every part of the railroad and property described as follows, to-wit:

Commencing at the east end of Market street, in Brooks & Co.'s addition to Des Moines, Iowa, and running thence west on Market street, crossing Twenty-fourth street, Twenty-third street, Twenty-second street, Nineteenth street and Seventeenth street to the west line of East Eleventh street in said city, thence westerly along and across Vine street from East Eleventh street to East Eighth street and on, over and along the alleys in blocks twenty-one, twenty-two and twenty-three of the town of Des Moines, now included in the City of Des Moines, crossing East Twelfth street, East Eleventh street, East Tenth street and East Ninth street, thence west between Court avenue and Vine street, crossing all the streets and alleys of said city between East Ninth street and East Fourth street, thence westerly along the south alley between Court avenue and Vine street in said city to West Fifth street, crossing East Fourth street, East Third street, East Second street and Front street, Water street, West Second street, West Third street, West Fourth street and West Fifth street, and across all north and south alleys between East Fourth street and West Fifth street of said city, thence westerly in said city on the alley between Cherry street and Vine street from West Fifth street to the line of Fourteenth street or Section street if extended south of Mulberry street, crossing West Sixth street, West Seventh street, West Eighth street, West Ninth street, West Tenth street, West Eleventh street, West Twelfth street, West Thirteenth street and thence westwardly to Farnham street, and crossing all the north and south alleys of said city between West Fifth street and West Thirteenth street, together with all

other lines, branches, extensions, switches and side tracks, which are now or may be hereafter constructed, to connect the lines or property of said company with the lines of other railway companies converging in Des Moines, Iowa, or which are or may be built to any other point within said city.

Also all lots of land upon any part of which the said railroad, its extensions, side tracks or branches, or any of them, or any depots, shops, round houses, water tanks or other structures now are or may be hereafter constructed, and of which the said railway company is or may become the owner or holder, by deed, lease or other beneficial interest, to the full extent of said railway company's interest therein, as the same does now or may hereafter exist.

Also the bridge of said railway company over and across the Des Moines River in said city, touching upon and lying immediately north of the south alley between Court avenue and Vine street in said city, with all the approaches and appurtenances thereto, owned or used by said company in connection therewith.

Also all the property and realty embraced in the several conveyances made to the said Des Moines Union Railway Company by James F. How, trustee, James F. How, Grenville M. Dodge, the Des Moines Northwestern Railway Company, the Des Moines and St. Louis Railway Company, and the St. Louis, Des Moines and Northern Railway Company, or any other person or corporation not specially named above, and for which conveyances reference is hereby prayed to the records of said Polk County, Iowa.

And all other branch or tributary roads which are now owned of that may hereafter be acquired, located or constructed, including the right of way therefor, the road-bed thereof, the superstructures and tracks placed or to be placed thereon and all station, depot and shop grounds, yards and other grounds used and to be used in connection therewith, and all rails, railways, bridges tracks, sidings, switches, fences, turntables, water tanks, viaducts, culverts, main passenger and other depots, station houses, freight houses, machine shops and all other structures, buildings and fixtures howsoever acquired or to be acquired for the use of the parties of the first part or the business thereof.

It being the intention of said Des Moines Union Railway Company to convey to said trustee, not only the property specifically described herein, but also

All and Singular the whole line of railroad of the party of the first part, as the same now is or may be hereafter

located, constructed or acquired under its charter, with all its tracks, side tracks and switches; and also all lines of road connecting its tracks with other lines of railroad with which it may join or intersect; and all such spurs, extensions, side tracks, yard tracks, turn outs, switches and appurtenances as it has constructed or may hereafter construct to enable it to connect with warehouses, elevators, stock yards, mills and manufacturing establishments along or near its routes, as well as all real estate now owned or hereafter acquired, with all the tracks and improvements thereon which said Des Moines Union Railway Company now has or may hereafter find it necessary or proper to have in order to enable it to transact a general railway transfer business in and about said City of Des Moines, Iowa.

Together With All the rolling stock, machinery, tools, implements, fuel and materials of the party of the first part now owned or that may hereafter be acquired for constructing, maintaining, operating, replacing, improving or repairing the said road, and its appurtenances, or any part thereof, or in or for the business of said railroad, and all the real estate of said party of the first part wherever the same may be situated, now held or hereafter to be acquired.

Together with all the corporate rights, privileges and franchises of the said party of the first part, now possessed or that may be hereafter acquired, connected with or relating to the said railroad and the construction, maintenance, use and enjoyment of the same.

Together with all the streets, ways, passages, water courses, easements, rights, liberties, privileges, hereditaments and appurtenances whatsoever unto any of the hereby granted and mentioned premises and estates, appertaining or belonging thereunto, with all the reversions, remainders, rents, issues and profits thereof, and all the estate, right, title, interest, property, claim and demand of every nature and kind whatsoever of the said party of the first part now owned and possessed, or that may be hereafter acquired, as well at law as in equity, of, in and to the same, and every part and parcel thereof.

To have and to hold the above described premises, property, rights, franchises and appurtenances, contracts, rentals and income, unto the said party of the second part, and its lawful successor or successors and assigns forever to and for the only proper use and behoof of the party of the second part, its successor or successors and assigns.

But in trust, nevertheless, for the equal pro rata benefit and security of all and every the persons or corporations who may be or become holders of the said bonds issued under and secured by this deed of trust or mortgage, or such of them as shall be issued by the said railroad company without preference, priority or distinction as to lien or otherwise of any over the others, and so that each and all of the said bonds issued and to be issued as aforesaid shall have the same right, lien and privileges under and by this deed of trust or mortgage, and shall all be equally secured thereby.

And it is hereby expressly covenanted and understood by and between the parties hereto, the party of the first part covenanting as well for itself as for its successors and assigns, and the party of the second part covenanting as well for itself as for its assigns and its successors or successors in the trust, that the said above described premises, property, rights, franchises and appurtenances are to be held by said trustees upon and for the trust, uses and purposes following, that is to say:

First. In case the party of the first part shall fail to pay the said interest coupons subjoined to the bonds so executed by that company, or any or either of the said coupons, or any part of the same, at the time or times and in the manner so as aforesaid provided for the payment thereof, and in case such default shall continue for the space of six months, the party of the second part or its successor may enter upon and take possession of all or any part of the above granted premises, and itself and by its attorneys, agents and servants, may take, hold, use and operate the same, making from time to time needful repairs and alterations, and may receive the tolls, rents, issues, profits and income derivable therefrom, and after deducting and paying out of such gross receipts and income the expenses of operating and managing the premises, and of such needful repairs and alterations, and any taxes and other necessary and proper charges upon or pertaining to the premises, and executing the hereby created trust, the party of the second part and its successor in the trust shall apply the surplus or net receipts and income so realized by it to the payment of said interest coupons in the order in which the same shall have become, or shall be, due and payable.

Second. In case default shall occur as aforesaid, in the payment of said interest coupons, or any of them, and shall continue for said period of six months, then and in such case after entry as aforesaid, or without such entry, and upon the written request of the holders of at least one-half of the aggregate amount of the bonds so executed by the Des Moines

Union Railway Company and then outstanding and unpaid, the party of the second part and its successors in the trust may personally, or by its attorneys or agents, sell and dispose of all and singular the above granted and described premises at public auction, in the City of Des Moines, Iowa, having first given notice of the time and place of such sale by advertisement published in some newspaper of general circulation published in the City of New York, and also in one newspaper of general circulation published in the City of Des Moines, Iowa, and which notice shall, in each of said newspapers, be so published at least once in each week for at least six weeks preceding the sale.

And the party of the second part, or its successor or successors in the trust, may make, execute and deliver to the purchaser or purchasers at such sale a good and sufficient deed of the premises so sold to him or them, and the sale so made as aforesaid shall be a perpetual bar both in law and in equity against the party of the first part and all other persons claiming said premises, or any part thereof, by, through or under it. But if deemed expedient by the party of the second part or its successors in the trust, it or they may cause such sale to be made through or under juricial proceedings of foreclosure to be instituted by it or its said successors.

Third. From the proceeds of any sale which may be made as aforesaid, after deducting the proper costs and expenses thereof, and of all other expenses, advances or liabilities which shall have been duly incurred under these presents or the powers thereof, or for taxes or other proper charges, and the reasonable compensation of the party of the second part or its successors in or for the execution of the hereby created trusts, the party of the second part or its successors shall apply the remainder of such proceeds to the payment of the principal of such of the said bonds, executed by the Des Moines Union Railway Company, as, have been duly certified and issued in the manner hereinbefore provided, shall be outstanding and unpaid, after first paying the interest which shall have then accrued upon any of said bonds and shall be in arrear and unpaid. And if, after so paying all sums payable for principal and accrued interest upon said bonds, a surplus shall remain, such surplus shall be paid to the party of the first part, its successors or assigns. But if such proceeds shall not be sufficient for payment of all the said bonds in full, then the same shall be applied ratably, and without discrimination or preference, to the payment of the principal and interest of all of them, except that payment of interest coupons shall be in the order of the date of their maturity.

Fourth. In case default shall be made in the payment of any of the interest coupons aforesaid, according to the tenor thereof, and such default shall continue for the space of six months, then, and in such case, after the lapse of said period, the principal of said bonds with all accrued unpaid interest thereon shall, at the option of the party of the second part, or its successors, become (for all the purposes of these presents), immediately due and payable, anything contained in the said bonds or in these presents notwithstanding; but a majority in interest of the holders of said bonds may in writing (and for all purposes of these presents), revoke or annul the decision of said second party, upon such option.

Provided, however, that nothing done or omitted in respect of such default shall prejudice the rights of the party of the second part or of its successors in respect of any subsequent default.

Fifth. Upon payment by the party of the first part of all sums which shall become due as principal and interest upon said bonds, and of all expenses incurred under and by virtue of these presents, then and thereupon, all estate and power of the party of the second part and its successors under or by virtue of these presents shall cease.

Sixth. If by reason of any default, as hereinbefore provided, possession of the above granted premises shall be taken, and no sale thereof shall have been had under the powers hereby created, such possession shall be surrendered upon the payment of all sums then due upon said bonds up to and at the time of such surrender, including in such payment the principal, if then due by the terms of the said bonds, or by election as above provided. But the said surrender shall be of the premises as existing at the time thereof, and shall not prejudice or impair the estate and lien of these presents in respect of any sums secured by said bonds and not theretofore paid or satisfied, nor affect or impair the rights of the party of the second part and its successors in respect of any default thereafter accruing.

Seventh. It is understood and agreed that these presents shall be a security for the due payment of all sums which shall become due and payable under or by virtue of the said bonds, notwithstanding any laws of the State of Iowa now in force or hereafter to be enacted for the extension, stay of execution, valuation or appraisal and without delay or relief from or by reason thereof, and that all operation and benefit of such laws is hereby waived, to the end that the same shall not be invoked or made effective to restrict, postpone or impair the operation of these presents or the estate and power thereby created.

Eighth. It shall be the duty of the party of the second part and its successors to proceed in and with the execution of the several powers hereby vested in it or them, in the manner and at the times or in the cases hereinbefore specified for the exercise thereof, provided that requisition in writing to so proceed shall be made upon them by or in behalf of the holders of at least one-half in amount of the said bonds then outstanding and unpaid, or of the holders of a less proportion of the said bonds, in case and to the extent that compliance with such request of the minority shall (after reasonable notice to other parties in interest) appear to them to be clearly necessary for the protection of the trust estate or security of the said bonds.

Ninth. The party of the second part or any successor to it in the trust hereby created may resign as trustee under these presents by writing, taking effect thirty days after the delivery thereof to the said party of the first part; or, upon the payment of its reasonable charges for services rendered and money expended in the performance of its duties as trustee up to that time, it may be removed, and a successor or successors appointed by writing, signed by the holders of a majority of said bonds at the time outstanding.

The said trustee shall receive a reasonable compensation for every act done by it as such trustee under this indenture; and the said trustee shall not be required to take any step in the execution of this trust likely to subject it to liability or expense, unless the holders of the bonds secured thereby or some of them shall give sufficient security to indemnify the trustee from such liability or expense. And the trustee shall be at liberty to appoint counsel learned in the law in all suitable cases, whose reasonable fee shall be a proper charge upon the trust estate; and it is hereby further provided that said trustee shall not be liable for any default or neglect of any agent by it appointed, when such agent shall have been selected with reasonable discretion, and said trustee shall only be required to exercise good faith and ordinary diligence in the performance of its duties under this indenture.

Tenth. The party of the first part, its successors and assigns, shall and will duly execute to the party of the second part and its successors and assigns such further deeds, conveyances and assurances, for the better assuring to the party of the second part and its successors and assigns upon and for the trusts and purposes aforesaid, and all and singular the premises above granted and described or intended to be

granted or included in these presents, as shall from time to time be reasonably required by the party of the second part or its successors.

The party of the first part shall and will from time to time hereafter, upon the demand of said trustee, grant, convey, assign, transfer and set over unto the said trustee all real estate, which may be hereafter acquired in said City of Des Moines, and all personal estate, corporate rights and franchises which it, the party of the first part, shall hereafter in any way or manner acquire as appurtenant to the property hereby granted, or for use upon or in the business of its railroad, together with all leases and grants of right of way which may hereafter be made by the said party of the first part; and shall and will also make, do, seal, execute, deliver and acknowledge or cause to be made, done sealed, delivered and acknowledged all and every such further acts, matters, things, deeds, conveyances and assurances in the law for the better assuring, conveying and confirming unto the trustee all and singular the hereditaments and premises, estates, leases, contracts and property hereby conveyed or intended so to be, or which are hereby covenanted and agreed to be hereafter conveyed to the said trustee as by such trustee shall be desired or required for the better securing and carrying out the objects and purposes of this mortgage, and securing payment of the principal and interest of the bonds intended to be hereby secured, all of which estate shall, when granted and conveyed as aforesaid, be held by the said trustee upon the several conditions of this trust, and for the uses and purposes hereby created and declared with respect to the property herein specifically described.

Eleventh. The party of the second part shall at all times have full power (to be exercised in its own discretion and not otherwise), when requested so to do in writing by the said party of the first part, to release from the lien hereof, or convey to such party or parties as may be designated in writing by said first party, any unused portion of the premises hereinbefore granted, or which may be appurtenant to said railroad, and which, in the opinion of the trustee, shall be no longer necessary for use in the business of said first party, or which the said party of the first part may deem it expedient to discontinue or abandon by reason of any change in the location of its depots, tracks, shops, round houses, offices or other improvements; and the trustee may consent to any changes in the location of the tracks, station houses, depots, shops, or other buildings which the party of the first part shall desire to make, and shall deliver such instru-

ments as may be necessary and proper to carry the same into effect, but all estate in lands or property acquired for use in substitution for those so released, shall vest in the trustee upon the same trusts declared in these presents; and the proceeds of any and all lands and premises for which others shall not within a reasonable time be substituted, shall be paid over to the trustee to be by it applied to the purchase or redemption of the bonds hereby secured, which bonds shall, when so purchased or redeemed, be cancelled and surrendered to the party of the first part, and said first party may from time to time dispose of, according to its discretion, such portion of the machinery, tools, implements and material which shall be at any time acquired or held for the use of said railway, and which shall have become unfit or unnecessary for such use, and any and all new or other machinery, tools, implements and material which may be acquired in substitution for any so disposed of, shall by virtue and force hereof become and be immediately, upon the acquisition thereof, subject to the lien and operation of these presents without any new conveyance or transfer or other act or proceeding whatsoever.

Twelfth. If from any cause there shall be a vacancy in the trust created by this instrument, the same may be filled by a proper instrument of writing signed by the holders of at least one-half in amount of said bonds then outstanding; but nothing herein contained shall be so construed as to prevent the filling of such vacancy by any court of competent jurisdiction, in any proper proceeding to which the then holders of at least one-tenth of said bonds and the party of the first part are parties, and of which proceeding reasonable notice shall have been given in any manner directed by such court.

Thirteenth. The party of the first part has by resolution of its Board of Directors, approved by its stockholders, authorized the execution of these presents to the party of the second part. But nothing herein contained is to be in anywise construed as subjecting to personal liability on account hereof, the officers or stockholders of the party of the first part, or any of them, or their personal or individual estates.

In Witness Whereof, the Des Moines Union Railway Company, in pursuance of the resolution aforesaid, has caused these presents to be executed by its President, and attested by its Secretary, and has caused its corporate seal to be hereunto affixed the day and year first aforesaid; and said Central

Trust Company of New York has also executed the same as an evidence of its acceptance of the trust hereby created.

THE DES MOINES UNION RAILWAY CO.,

(Seal)

By G. M. Dodge,
President.
F. M. Hubbell,
Secretary.

Attest:

F. M. Hubbell, Secretary.

CENTRAL TRUST COMPANY OF NEW YORK,

Trustee.

By E. Francis Hyde,
Second Vice-President.

Attest:

C. H. P. Prouty, Secretary.

County of New York,

State of New York—ss.

Be it Remembered, That on this 13th day of February, A. D. 1888, before me the undersigned, a Notary Public within and for the County of New York and State of New York, came G. M. Dodge, President of the Des Moines Union Railway Company, who is personally known to me to be the identical person whose name is affixed to the within and foregoing instrument of writing, as President of said Des Moines Union Railway Company, and who acknowledged the same to be his voluntary act and deed as President of the Des Moines Union Railway Company, party thereto; that said instrument was executed by him in behalf of said corporation by authority of its Board of Directors, and that he executed the same as the voluntary act and deed of said Des Moines Union Railway Company, for the uses and purposes therein mentioned.

In Testimony Whereof, I have set my hand and affixed my official seal, this 13th day of February, A. D. 1888.

(Seal)

HERBERT E. DICKSON,
Notary Public, County of New York,
State of New York.

State of Iowa,

County of Polk—ss.

Be it Remembered, That on this 28th day of February, A. D. 1888, before me the undersigned, a Notary Public within and for the County of Polk and State of Iowa, came F. M. Hubbell, Secretary of the Des Moines Union Railway Com-

pany, who is personally known to me to be the identical person whose name is affixed to the within and foregoing instrument of writing, as Secretary of said Des Moines Union Railway Company, party thereto; that the seal affixed to said instrument is the seal of said corporation; that said instrument was signed and sealed by him in behalf of said corporation by authority of its Board of Directors, and that he executed the same as the voluntary act and deed of said Des Moines Union Railway Company, for the uses and purposes therein mentioned.

In Testimony Whereof, I have hereunto set my hand and affixed my official seal, this 28th day of February, A. D. 1888.

(Seal)

C. HUTTENLOCHER,
Notary Public, County of Polk,
State of Iowa.

State of New York,
County of New York—ss.

Be it Remembered, That on this 13th day of February, A. D. 1888, before me the undersigned, a Notary Public within and for the County of New York and State of New York, came E. Francis Hyde, Second Vice-President of the Central Trust Company of New York, who is personally known to me to be the identical person whose name is affixed to the within and foregoing instrument of writing, as Second Vice-President of said Central Trust Company, party thereto; that the seal affixed to said instrument is the seal of said corporation; that said instrument was signed and sealed by him in behalf of said corporation by authority of its Board of Directors, and that he executed the same as its voluntary Act and deed for the uses and purposes therein mentioned.

In Testimony Whereof, I have hereunto set my hand and affixed my official seal, this 13th day of February, A. D. 1888.

(Seal)

HERBERT M. HYDE,
Notary Public, County of New York,
State of New York.

Filed for record May 21st, 1888, at 5.05 P. M.

D. C. BISHARD,
Recorder.

Recorded in Book 196, Pages 525 and following:

Plaintiffs Exhibit No. 24.

Proceedings had at Annual meeting of Stockholders Des Moines and Northwestern Ry. Co., January 2nd, 1890.

A meeting of the stockholders of the Des Moines and North Western Railway Company was held at Des Moines, Iowa Jan'y 2, 1890, assembled in regular session.

Present	F. M. Hubbell	representing	shares
	G. M. Dodge		3500 "
	L. M. Martin,		1 "
	A. B. Cummins,		1 "

President F. M. Hubbell in the chair.

The president stated the first business of the Board to be the election of Seven Directors to hold their offices for one year or until their successors are qualified.

A. B. Cummins was elected as temporary Secretary and he thereupon moved that the meeting of the stockholders be adjourned until 2 o'clock this afternoon which motion was adopted and the meeting adjourned to meet again at 2 o'clock P. M.

A. N. DENMAN,
Secretary.

2 P. M. January 2, 1890—Stockholders met pursuant to adjournment.

Present	F. M. Hubbell	representing	shares
	A. B. Cummins	"	"
	H. D. Thompson	"	"
	F. C. Hubbell	"	"
	A. N. Denman	"	"

President F. M. Hubbell in the chair.

Voted: That we now proceed to the election of Seven Directors to hold office for one year or until their successors be chosen. A ballot having been taken all the votes were found cast for the following persons who were thereupon declared elected directors for the ensuing year. F. M. Hubbell, G. M. Dodge, A. N. Denman, H. D. Thompson, Fred C. Hubbell, A. B. Cummins, and L. M. Martin.

Upon motion it was unanimously Resolved:

That the Stockholders of the Des Moines & N. W. Railway Co., hereby ratify & approve the execution of the mortgage to the Central Trust Company by the Des Moines Union Railway Company upon all its property and franchises to secure the

issuance of \$800,000 of First Mortgage Bonds and do declare that this resolution shall have the same force and effect as though this authority had been executed prior to the execution of said mortgage.

The record of the last meeting of the stockholders was read also the minutes of the Directors meetings during the past year. Said record & minutes and all the action of the officers of the company for the past year was ratified approved and confirmed.

A. N. DENMAN,
Secretary.

Plffs. Exhibit No. 25.

Proceedings had at Meeting of Stockholders Des Moines and St. Louis Railroad Company January 3rd, 1890.

Des Moines, Iowa, January 3rd, 1890.

Pursuant to adjournment, the stockholders of the Des Moines & St. Louis Railroad Company met at the office of the Company at eleven o'clock A. M., January 3rd, 1890.

There were present:

F. M. Hubbell, representing one (1) share of stock;
J. S. Polk, representing one (1) share of stock;
C. M. Hays, representing one (1) share of stock;
James F. How, representing one (1) share of stock;

The Purchasing Committee of the Wabash, St. Louis & Pacific Railway Company, represented by James F. How.

James F. How, President, presiding.

The President stated the first business of the meeting to be the election of a Board of Directors for the ensuing year, to hold their offices until their successors are elected and qualified.

Upon a ballot being taken for the election of a board of nine directors, it appeared that the votes of all the stockholders present had been cast for the following persons as Directors:

James F. How,
A. B. Cummins,
George S. Grover,
C. M. Hays,

O. D. Ashley,
W. H. Blodgett,
H. S. Priest,
J. S. Polk,

and F. M. Hubbell.

The gentlemen named having received the unanimous vote of all the stockholders present and represented, were declared

duly elected Directors for the ensuing year, or until their successors are elected and qualified.

A. B. Cummins offered the following resolution:

Resolved, That the Stockholders of the Des Moines & St. Louis Railroad Company hereby ratify and approve the execution of the mortgage to the Central Trust Company by the Des Moines Union Railway Company, upon all its property and franchises to secure the issuance of Eight Hundred Thousand Dollars (\$800,000.00) of first mortgage bonds, and do hereby declare that this resolution shall have the same force and effect as though this authority has been executed prior to the execution of said mortgage.

This resolution was unanimously adopted.

There being no further business before the meeting, it was upon motion of Mr. Chas. M. Hays, adjourned.

F. M. HUBBELL,
Secretary.

Plffs. Exhibit No. 26.

Proceedings had at Stockholders meeting of Des Moines Union Ry. Co., March 31st, 1888.

March 31st, 1888.

The Stockholders met this day pursuant to adjournment at the office of the Company in Des Moines, Iowa. There were present and represented at the meeting the following named stockholders of said Company, to-wit:

G. M. Dodge, Jefferson S. Polk, Charles M. Hays, F. M. Hubbell, James F. How, W. H. Blodgett and L. M. Martin.

On motion, G. M. Dodge was elected Chairman and F. M. Hubbell Secretary of the meeting.

The chairman then requested the reading of the minutes of the meetings of the Board of Directors, for the past year, which was done, and after consideration of the same, the action of the Board as therein indicated was approved.

On motion, the meeting proceeded to the election of a Board of Directors for the ensuing year.

James F. How on behalf of the Wabash, St. Louis & Pacific Railway Company, and of the Des Moines & St. Louis Railroad Company, and of the Wabash Western Railway Company, nominated Charles M. Hays, W. H. Blodgett, John

S. Polk and James F. How to be voted for as directors to represent said interests.

F. M. Hubbell, on behalf of the Des Moines Northwestern Railway Company nominated Jefferson S. Polk and F. M. Hubbell to be voted for as Directors to represent said Company.

G. M. Dodge, on behalf of the St. Louis, Des Moines & Northern Railway Company, nominated L. M. Martin and G. M. Dodge to be voted for as Directors to represent the interests of said Company.

A ballot was then taken for the election of said Board of Directors, and it appearing that each of the above persons so nominated received the unanimous vote of the stock present and represented for said office, were each declared Directors of this Company for the ensuing year.

Resolved, That the officers of this Company purchase for its use from Polk & Hubbell, Lots three (3) and Four (4) in Block thirty-three (33) of Keene & Poindexter's Addition to Fort Des Moines, for the sum of two thousand dollars, to be paid in the bonds of this Company, at par, which were ordered to be issued November 1st, 1887.

Resolved, That an Executive Committee of three shall be appointed (one from each Railway Company owning stock in this Company) who are to attend to its business, their acts to be ratified by the Board of Directors, and that Charles M. Hays be appointed for the Wabash Western Railway Company, F. M. Hubbell for the Des Moines Northwestern Railway Company and L. M. Martin for the St. Louis, Des Moines & Northern Railway Company.

Resolved, That the officers of this Company be directed to ascertain the amount it will cost to buy the Heath Elevator and Mill Property, and build a new passenger depot and the necessary tracks for the use of this Company's property.

Resolved, That the Des Moines Northwestern Railway Company, the St. Louis, Des Moines & Northern Railway Company and the Des Moines & St. Louis Railroad Company, or their successors or assigns, shall pay the operating expenses, taxes and interest on bonds that are or may be issued, after deducting any amount received from other sources for rental, pro-rated on a wheelage basis, and that said payments, including interest charges, shall be made monthly, and when for any reason, said Companies, or either of them, shall be or become in default in the making of any such payment, or any part thereof, on the day when the same shall be or become

due and payable as aforesaid, interest shall be collected upon amount so in default to the time same shall be fully paid and satisfied.

Resolved, That Col. W. H. Blodgett be requested to prepare an agreement for three years from May 1st, 1888, based on the above resolution and covering in detail the conduct and operation of the Des Moines Union Railway Company. Said agreement to be approved and executed by all the lines now holding an interest in the property.

Said agreement shall provide that if at the end of six months from date of same, either party to the contract shall feel that the terms of same are unjust to them, and give notice to that effect, it shall be a matter for readjustment.

Resolved, That the terms and conditions on which the several lines now interested, or which may hereafter become interested, shall enjoy the use of these terminals, be fully set forth in a supplemental agreement to be made and executed between the Des Moines Union Railway Company and each of the lines using the said terminals.

Resolved, That the officers of this Company are requested to immediately open negotiations with the Chicago, St. Paul & Kansas City Road for the use of terminal facilities on better terms for this Company than are now being paid by them.

Resolved, That Col. W. H. Blodgett, for his services in preparing deeds to this Company for the property acquired by it and the form of bond issued on same, as also the deed of trust securing said bond, and also for the preparation hereafter of the form of agreement to be prepared for the use of the property, in conformity with the resolution adopted above, be allowed one bond of this Company with interest coupon due May 1st, 1888, on same detached.

Whereas, It is shown that the Wabash, St. Louis & Pacific Ry. Co. or its successors, are entitled to.....\$382,110.80
and G. M. Dodge is entitled to..... 74,088.01
and Messrs. Polk and Hubbell are entitled to..... 2,000.00
and the Des Moines & Northwestern Railway Company is entitled to..... 3,058.40
said separate amounts being for money expended for the property acquired for this Company.

Resolved, That in settlement of said amounts 382 bonds be issued to the Purchasing Committee of the Wabash, St. Louis & Pacific Railway

- 74 bonds be issued to G. M. Dodge, and
- 2 bonds to Messrs. Polk & Hubbell, and
- 3 bonds to the Des Moines & Northwestern Railway Company,

all of said bonds having detached from same the interest coupons to May 1st, 1888.

And that the excess remaining due to parties above of the amount stated after the receipt of the said bonds, to be paid by this company, same being divided among the different stockholders in the manner provided above, for the distribution of interest.

All of the above and foregoing resolutions were passed by the unanimous vote of all of the stockholders present.

Whereupon the stockholders meeting then adjourned sine die.

F. M. HUBBELL,
Secretary.

Plffs. Exhibit No. 27.

Agreement made May 10th, 1889, between the Des Moines Union Ry. Co. of the first part, the Des Moines & St. Louis Railroad Co., the Des Moines & Northwestern Ry. Co. and the St. Louis, Des Moines & Northern Ry. Co. of the second part, being "Exhibit P" to Amended Bill.

This Agreement, made and entered into this 10th day of May, A. D. 1889, by and between the Des Moines Union Railway Company, of Des Moines, Iowa, party of the first part, and the Des Moines & St. Louis Railroad Company, the Des Moines & Northwestern Railway Company, and the St. Louis, Des Moines & Northern Railway Company, parties of the second part, Witnesseth that:

Whereas, the said party of the first part is the owner of valuable terminal facilities in the city of Des Moines, Iowa, as hereinafter described; and

Whereas, the respective parties of the second part have railroads in the state of Iowa which terminate at, or run into and through said city of Des Moines, and in order to prevent unnecessary expense, inconvenience and loss attending the accumulation of a number of stations, and in order to facilitate the public convenience and safety, it has become important that said second parties should have the use of the terminal facilities of said first party; and

Whereas, said party of the first part has become incorporated and organized under the laws of the state of Iowa for the purpose of owning and operating a line of railway in the said city of Des Moines, Iowa, extending from the eastern boundary line of said city to Farnham street, in the western part thereof; and

Whereas, said party of the first part, in pursuance of said charter has acquired and now owns a railway in said city, as above set forth, and has already acquired or constructed a large number of valuable main and side tracks, depots, depot grounds, lands, yards, shops, round houses, freight houses and other terminal facilities, and intends to acquire and construct more; and

Whereas, said second parties are each desirous of having the right to use said terminals in connection with their respective railroads; and

Whereas, for the protection of the parties hereto and their assigns, it is important that the rights, duties, and liabilities of each in regard to the whole subject-matter of said terminal facilities, including their use, care, control, rental, taxes, expenses, renewals, insurance, and repairs, shall be stated and defined.

Now, therefore, in consideration of the premises, it is mutually agreed by and between said party of the first part and each of the several parties of the second part (each of said second parties contracting for itself), as follows:

Section One. The party of the first part agrees to proceed with reasonable dispatch, and whenever its board of directors shall deem it expedient, to erect and furnish for the use of the parties of the second part, in said city of Des Moines, a union passenger depot, and such additional switches, sidings, freight depots, round houses, shops, water tanks, and yard appurtenances, as the board of directors of said first party may consider reasonable, and for those purposes said first party shall acquire by lease, purchase, or otherwise such additional real estate as may be necessary.

Section Two. The amount of such additional grounds and the form, character, and cost of said union depot and other structures and appurtenances to be erected and furnished by said party of the first part, as well as the management, operation, improvement, and repairs thereof, shall in all matters not otherwise specifically provided for herein, be determined by the board of directors of said first party.

Section Three. Each of said parties of the second part for itself and its assigns, agrees to pay to said party of the first part a sum of money to be ascertained as follows, to-wit:

1st. There shall be ascertained the amount required to pay five per cent interest upon the mortgage bonds of the party of the first part, one-twelfth of which, less any deduction hereinafter provided for, shall be payable monthly as hereinafter specified.

2nd. At the expiration of each month, or as soon thereafter as practicable, there shall be ascertained the expenses of maintaining and repairing the property of the party of the first part, including the maintenance and repair of tracks, depots, round houses, engine houses, etc., during the preceding month. And in like manner there shall be ascertained the taxes, general or special, levied upon or against said property and paid during the preceding month, or to be paid during the next succeeding month, and the insurance, if any, paid during the preceding month, or to be paid during the next succeeding month.

3rd. There shall be likewise ascertained the costs and expenses of every nature connected with the operation of said terminal station, freight and passenger depots, depot grounds, round houses, transfers and other properties, which is to include every item of expense or disbursement incurred or made by the party of the first part not hereinbefore mentioned, except the expenses specified in Section Nine hereof.

Section Four. Having so ascertained the monthly aggregate of all the items and sums mentioned in the preceding section, there shall be deducted therefrom the amount, if any, which other railway companies may be under obligation to pay by virtue of contracts for the use of said property, or parts thereof, for the preceding month, and the remainder shall be paid by the parties of the second part in the proportion that the wheelage of each of said parties bears to the entire wheelage of all said second parties during such preceding month; and it is expressly understood and agreed that in computing wheelage, three narrow gauge cars shall be taken as the equivalent of two standard gauge cars; and that the term "wheelage" as used in this contract means that three narrow gauge cars are to be accepted as the equivalent of two standard gauge cars.

Section Five. If the amount, or any part of the amount, due from any other railroad company or companies for the use of said property, or any part thereof, shall not be paid when due, then the sum so due and unpaid shall also, on demand of

said first party, be paid to it by said second parties on a wheel age basis as hereinbefore defined.

Section Six. The party of the first part, in consideration of the payments to be made to it by said parties of the second part, hereby grants to said second parties the use of its terminal properties as aforesaid, and said first party agrees to keep and maintain its said terminal properties in good condition and repair, and to provide and maintain all such engines, machinery, appliances, buildings and structures, and all such servants and employees as shall be reasonably necessary for the conduct of its business and the moving and handling of the cars, passenger and freight, of said second parties, and the housing and care of their engines. And said first party further agrees to switch all cars, handle all freight, house and care for all engines of said second parties which may be delivered to it or which may come upon its said premises, in so far as either of said second parties may request it so to do.

Section Seven. The party of the first part shall on or before the tenth day of each month, or as soon thereafter as practicable, make up and present to each of the parties of the second part, an account showing the amount due thereunder for the preceding month, and payment thereof shall be made within five days thereafter.

Section Eight. So far as relates to the rental necessary to raise a fund for the payment of interest upon the mortgage bonds, this contract shall be retrospective and shall govern from and after the first day of May, 1888.

Section Nine. The costs and expenses of operating the engine houses and their appurtenances, and each of them, including the cost of turning and housing engines, furnishing water and sand, and of wiping, washing and firing up, shall be borne by each of said companies in such proportion as the number of road engines of each company in and out of said engine house shall bear to the whole number of road engines in and out of said engine house during the period for which said costs and expenses are made up. All repairs to engines shall be charged for and paid by each of said companies for whom the work is done on the basis of actual cost of labor and materials and all services rendered, supplies and labor furnished to any of the railroad companies, parties hereto, for their own benefit, and which are not properly a portion of the joint expense shall be charged directly to said company, on such equitable terms as may be agreed upon between the superintendent of the party of the first part and the superintendent of the party to whom the service is rendered.

Section Ten. It is further agreed between the party of the first part and each of the second parties hereto, that if any one of the parties of the second part shall, for any reason, fail or refuse for a period of thirty days after the same has become due, and has been demanded, to pay the several sums under this contract as aforesaid, then the party of the first part may take from any moneys in its hands belonging to the said defaulting party, or in the hands of its agents, the amount of said sums and apply a sufficient amount thereof to meet said demands. Should the sum in the hands of the party of the first part, or its agents, be insufficient to meet the amount due under this agreement and the same shall still remain unpaid, said first party shall have the right to exclude said delinquent party from said premises, and the party or parties so failing to pay shall forfeit all rights under this agreement, and the first party may thereupon, with the consent of the remaining parties of the second part, transfer and assign the rights of the party so failing to any other party or parties, for such sum as the board of directors of the first party may determine, and the same may be thereafter held and enjoyed by such assignee or assignees. But it is understood and agreed that nothing herein shall prevent the party of the first part from enforcing its claims against any delinquent lessee or lessees, parties of the second part, by any proper action either at law or in equity, to recover the amount which may be at any time due and unpaid, in case said party of the first part shall so elect.

Section Eleven. The directors of the party of the first part hereto shall appoint an executive committee, of which each party of the second part shall have one member as its representative.

Section Twelve. The management of the depot grounds and terminal facilities, including station, buildings, tracks, round houses, shops, etc., shall be in charge of a superintendent who shall be appointed by the executive committee, subject to the approval of the board of directors. Said superintendent shall, in the performance of his duties, be governed by such regulations as may from time to time be established by said executive committee, or by the board of directors.

Section Thirteen. The salary of said superintendent shall be fixed by the executive committee, subject to the approval of the board, and the compensation of other agents and employees shall not be higher than is paid by railroad companies in the vicinity for similar services.

Section Fourteen. Said terminal properties shall be used by said railroad companies, parties of the second part, for all

their passenger trains destined for or departing from said city of Des Moines, Iowa, and said second parties shall run all their trains to and from said depots and terminal properties, unless otherwise expressly permitted by said executive committee.

Section Fifteen. Said executive committee, subject to the board, shall make and publish and enforce such rules and regulations for the use, management and operation of said terminal station, depots, depot grounds, yards and tracks, by all the parties hereto, as it may from time to time consider necessary.

Section Sixteen. The said party of the first part shall at all times protect its depot buildings and improvements and furniture by adequate insurance against loss by fire, and the cost of such insurance shall be paid as herein provided for.

Section Seventeen. The party of the first part shall keep accurate books of account showing in detail all the expenditures made by it on account of the various items of interest, insurance, taxes, construction, improvement, operation, maintenance, and repairs, and other disbursements upon and about the premises, embraced in this agreement, and said books shall show the amount of work done for, and fuel or other material furnished to each party to this agreement, and the amount of fuel or other material received from each party hereto; and said books shall give such other details as will at all times enable the parties hereto to make accurate settlements of their accounts as provided in this agreement, and said books may at all reasonable and proper hours be examined and inspected by the superintendent, auditor or treasurer of said second parties, or by an authorized accountant.

Section Eighteen. The said party of the first part shall also keep an accurate record of all the engines and cars of each party hereto arriving at and departing from said terminal station, or said depot grounds, transfers and yards, and the cars of foreign roads that may be switched on to or from said terminals for the benefit of the several parties hereto, or others; and of all the engines which have been housed at said engine houses in each month; and as hereinbefore provided, said first party shall furnish to the other parties hereto, a full, true and detailed statement of all the expenditures made, of all the fuel and other supplies used, delivered and received, of all the cars and engines received, handled or switched, of all work done or repairs made and of all the engines housed and other expenses connected with the operation of said property during the month next preceding.

Section Nineteen. All damages which may be received by any engine or engines, car or cars of any party hereto, while being switched by said first party at or upon any part of the

premises embraced in this agreement, shall be repaired by the party to whom such rolling stock belongs, and the cost of such repairs shall be borne and paid by each party hereto on a wheelage basis, as herein defined.

Section Twenty. All damages to property other than as above described, caused by any engine or engines, car or cars, of either party hereto, or by any imperfection in the track or tracks laid on said premises, and all injuries which may at any time be received by any person or persons in, around, about or upon said terminal station, depot grounds, yards, etc., shall (if settled at all) be adjusted and settled by said first party, and the sums thus paid in settlement or settlements shall be borne and paid by each of the parties hereto upon said wheelage basis, as herein defined; Provided, however, that each party hereto shall, at its own sole cost and expense, hear, settle and pay all damages to property belonging to itself or to third parties, and all injuries to persons, when said damages or injuries are done to or by its own trains, while said trains are being moved by its own engines and operated and controlled by its own crews, unless such damages or injuries are occasioned by the act, neglect or fault of the servants of said first party, or by some imperfection in its track or tracks, and in case such damages or injuries are occasioned by the act, negligence or fault of the servants of said first party, or by an imperfection in its said tracks, then settlements and payments shall be made by said first party as in this section first provided.

Section Twenty-one. All persons employed and paid either permanently or temporarily by said first party in the maintenance and operation of said terminal station, depot grounds and yards, shall be deemed and taken to be the employees and servants of said first party.

Section Twenty-two. It is further agreed that the several covenants, conditions and stipulations herein contained shall be mutually binding upon the respective parties hereto, their successor, successors and assigns for the term of thirty years from May 1, 1888, unless this contract shall be sooner determined by consent of the parties hereto, or by reason of the provisions hereof.

Section Twenty-three. It is further understood and agreed that all of the aforesaid covenants and agreements on the part of said parties of the second part to be performed, are several and not joint.

Section Twenty-four. It is understood and agreed that the Des Moines & St. Louis Railroad Company, as the owner of one-half of the capital stock of the Des Moines Union Railway Company, may sell and transfer one-half of said stock, or

one-quarter of the whole to such railway company as may be acceptable to a majority of the parties of the second part; in which case it is agreed that said railway company which may become the purchaser of said stock, may be admitted as one of the parties hereto, of the second part, upon the same terms and conditions as those stipulated for the other parties of the second part. Only as aforesaid, shall other railroad companies be admitted to the use of the property of said first party, without the consent of all the parties of the second part, and the compensation to be paid by any other railroad company, or person not a party hereto (or provided for as aforesaid), for the use of said depot or terminal facilities, or any part thereof, shall be determined by the board of directors of said first party.

Section Twenty-five. It is further agreed by and between said first party and the several second parties hereto, that any of said second parties may sell, assign and transfer to any other one railroad company all its rights under this agreement, or said second parties, or any of them, may mortgage to any one party all their respective interests and rights under this contract; but none of said second parties shall subdivide, sublet, mortgage or assign to any other company, or person, a portion of its said rights and privileges herein, and any assignment, mortgage or lease made by any one of said second parties, which may be held sufficient to admit its assignee, mortgagee, or lessee, or their assigns, to the possession of any of said property, shall be held sufficient to exclude, and shall exclude, the party making such lease, mortgage or assignment from all its rights and privileges in and upon said property under this contract; but this clause shall not be so construed as to prevent any of said second parties from contracting to do the business, or handle with its own engines the traffic or cars of any other railroad company to and from said city on such terms as said first party may approve, provided the line of such other railroad company connects with the line of such second party not less than twenty miles from said city of Des Moines.

Section Twenty-six. Whereas, the several parties hereto of the second part are entitled to the shares of the stock of said first party in the following amounts or proportions, to-wit: The Des Moines & St. Louis Railroad Company to one-half said shares; the Des Moines & Northwestern Railway Company to one-fourth said shares; and the St. Louis, Des Moines & Northern Railway Company to one-fourth said shares and

Whereas, no certificates for said shares have as yet been issued to said parties;

Now, therefore, it is hereby further agreed between the parties hereto, that as the authorized capital stock of said company is two million dollars, or twenty thousand shares of one hundred dollars each, the same shall be issued and held as follows, to wit: One certificate of ten thousand shares shall be issued and delivered to the Des Moines & St. Louis Railroad Company; one certificate for five thousand shares shall be issued and delivered to the St. Louis, Des Moines & Northern Railway company, and one certificate for five thousand shall be issued and delivered to the Des Moines & Northwestern Railway Company, and all of said certificates shall express upon their face that they are not transferable in whole or in part, without the consent in writing of all the parties of the second part to this agreement, except that any shares of stock issued on request of either of said companies to any person, to qualify him as a member of the board of directors shall be re-transferable to the company on whose request it shall have been issued without the consent of the other companies; but certificates of stock so issued shall express upon their face that they are only transferable to the company on whose request they were issued, unless consented to by the other parties of the second part.

Section Twenty-Seven. Whereas, the parties of the second part have herein and hereby obliged themselves to pay as a part of the compensation for the use of said premises a sum sufficient to pay the interest on the whole number of bonds issued and used, or to be hereafter issued and used by said first party in purchasing, improving and equipping the terminal properties herein described;

Now, therefore, in consideration of the premises, the said first party hereby contracts and agrees to and with each of the second parties hereto, that it will not at any time hereafter issue or dispose of any of said bonds, except for the purpose of purchasing with them or their proceeds additional terminal property, or for improving or equipping that now owned by it in said city of Des Moines.

Section Twenty-Eight. In case any difference shall hereafter arise between the first and second parties hereto, concerning the management of said terminal station, depots, grounds, yards and tracks, with respect to any matter not herein provided for, or concerning any other matter or thing connected therewith, but not herein expressly provided for, such differences shall be referred to three competent men experienced in railroad management, who shall, as soon as practicable after they are chosen, proceed to examine and determine what would be just and equitable for each of said parties to do in and

about the matter in dispute. Each party shall choose one of said arbitrators and the two thus chosen shall select the third arbitrator and the decision in writing of a majority of said arbitrators with respect to the matter submitted, shall be furnished to and be thereafter binding upon each of the said parties; Provided, however, that such differences shall have no effect on the course of business at said terminal station, depot grounds, yards, etc., until the final decision of said arbitrators shall be made; but such business shall continue to be transacted, and such settlements and payments as are herein provided for shall be made as before, until the matter in dispute shall be adjusted by the said arbitrators, and thereupon such payments or restitutions shall be made as may be required by the decision of said arbitrators.

In Witness Whereof the respective parties hereto have caused their corporate seals to be hereunto affixed, and these presents to be signed by their respective presidents, and attested by their secretaries respectively, the day and year first above written.

(Seal) THE DES MOINES UNION RAILWAY COMPANY,

Attest: F. M. Hubbell,
Secretary.

By G. M. Dodge,
President.

(Seal) THE DES MOINES & ST. LOUIS RAILROAD COMPANY,

Attest: F. M. Hubbell,
Secretary.

By James F. How,
President.

(Seal) THE ST. LOUIS, DES MOINES & NORTHERN RAILWAY COMPANY,

Attest: J. T. Granger,
Secretary.

By G. M. Dodge,
President.

(Seal) THE DES MOINES & NORTHWESTERN RAILROAD COMPANY.

Attest: A. N. Denman,
Secretary.

By F. M. Hubbell,
President.

Plffs. Exhibit No. 28.

Meeting of the Stockholders of the Des Moines Union Railway Co.

Des Moines, Iowa, April 8th, 1890.

The stockholders of the Des Moines Union Railway Company met in an adjourned meeting pursuant to adjournment,

at ten o'clock A. M. at the office of the Company, on Tuesday, the 8th day of April, 1890.

There were present in person :

J. F. How,	representing	one Share
C. M. Hays,	representing	one Share
F. M. Hubbell,	representing	one Share
L. M. Martin,	representing	one Share
F. C. Hubbell,	representing	one Share
A. B. Cummins,	representing	one Share

There were present by proxy :

G. M. Dodge,	by L. M. Martin,	representing	one Share
W. H. Blodgett,	by J. F. How,	representing	one Share

There were also present the Des Moines & Northwestern Railway Company, successors to the Des Moines Northwestern Railway Company, by F. M. Hubbell, President.

The Des Moines & Northern Railway Company, successor to the St. Louis, Des Moines & Northern Railway Company, by A. B. Cummins, Vice-President.

The Des Moines & St. Louis Railroad Company by J. F. How, President.

J. F. How, President, presiding.

Thereupon, by an examination of the records and the books of the Company, it was determined that all the stockholders of said Company were present either in person or by proxy duly filed with the Secretary of the Company.

The minutes of the meeting of the stockholders held on the 18th day of February, 1890, were read and approved.

The presiding officer stated the first object of the meeting to be the consideration of certain proposed amendments to the Articles of Incorporation.

Thereupon, F. M. Hubbell moved that Article 1 of the Articles of Incorporation be stricken out and the following substituted in lieu thereof.

Article 1.

The name of the corporation shall be the Des Moines Union Railway Company and its principal place of transacting business shall be at Des Moines, in the County of Polk, and State of Iowa.

The motion was seconded by C. M. Hays, and was adopted by the vote of all the stockholders of the corporation.

C. M. Hays moved that Article 2 be stricken out, and the following substituted in lieu thereof.

Article 2.

The object of the corporation and the general nature of the business to be transacted shall be the purchase, lease, construction, ownership, maintenance and operation of a system of railway in, around and about the City of Des Moines, Polk County, Iowa, including the construction, purchase, ownership, maintenance and use of a union depot, depots, freight houses, railway shops repair shops, stock yards and whatever other things may be useful or convenient for the operation of railways at terminal stations, as well as the transfer and switching of cars from the line or depot of one railway to another, or from the various manufactories, warehouses, elevators or other sources of traffic to each other or to any of the railways or depots thereof, now constructed or hereafter to be constructed in or around said City of Des Moines, and also to lease terminal facilities to and furnish and perform terminal services for all railways whose lines reach or pass through or near the said City of Des Moines, and the corporation shall possess all the power conferred upon railway corporations by the laws of the State of Iowa, including the power to condemn private property for its use.

Which motion being seconded, was adopted by the unanimous vote of all the stockholders of the corporation.

L. M. Martin moved that Article 3 be stricken out, and the following substituted in lieu thereof:

Article 3.

The capital stock of the corporation shall be two million dollars (\$2,000,000.00) which shall be divided into shares of one hundred dollars each; said shares shall be paid for and issued in the manner following and not otherwise; four thousand shares as a part of the purchase price of the terminal property originally acquired by the corporation, it being now agreed by all the stockholders that said sum of four hundred thousand dollars, together with the first mortgage bonds theretofore issued for that purpose constituting the fair value of said property when so acquired; and all resolutions and proceedings of the corporation heretofore had with respect to the amount of capital stock to be issued as such purchase price, are set aside and held for naught.

Said four thousand shares of capital stock shall be issued to the following corporations and in the following proportions:

Two thousand shares to the Purchasing Committee of the Wabash, St. Louis & Pacific Railway Company, successor in ownership to the Des Moines & St. Louis Railroad Company, and the present owner of the property known as the Des Moines & St. Louis Railroad.

One thousand shares to the Des Moines & Northwestern Railway Company, successor to the Des Moines Northwestern Railway Company, and

One thousand shares to the Des Moines & Northern Railway Company, successor to the St. Louis, Des Moines & Northern Railway Company, and the said shares are hereby declared to be fully paid by the transfer of the aforesaid property. The remaining capital stock, to-wit: sixteen thousand shares, or any part thereof, shall be issued only by the authority of a resolution of the stockholders adopted by the vote of more than seven eighths of all the stock theretofore issued and shall be fully paid either in money or property at its fair market value, before certificates therefor shall be executed and delivered.

The stock shall be transferable only on the books of the Company by and with the consent of three-fourths of all of the Directors except in case the transferee of the stock is, or becomes the owner of either of the railroad properties above mentioned, in which event the stock shall be transferable by right and without consent.

Which motion was adopted by the unanimous vote of all the stockholders of the corporation.

A. B. Cummins moved that Article 4 be stricken out, and the following substituted in lieu thereof:

Article 4.

The affairs of the corporation shall be managed and its business conducted by a Board of Directors composed of eight persons, who shall be elected by the stockholders at their regular annual meeting to be held at the office of the Company in Des Moines, Iowa, on the first Thursday of January of each year, and they shall hold their offices for one year and until their successors are elected and qualified, but at all future election of Directors, it shall require the votes of more than seven eighths of all the stock theretofore issued to elect any director.

The Board of Directors shall have the power to authorize the execution of mortgages, to issue bonds, to enter into contracts, to purchase property, to construct buildings, to make leases, to authorize the institution of condemnation proceed-

ings and to do all such other things as may be proper or necessary for the corporation to do, but with respect to the matters above mentioned and all other matters except the ordinary operation of the property, the Board of Directors can act only upon the unanimous vote of the eight members thereof, and in order to facilitate the transaction of business, power is expressly conferred upon each of the Directors to delegate by written authority, some other person to act or vote for him, and in his stead.

Provided that such authority shall be filed with the Secretary at or before the time the meeting convenes.

The Board of Directors shall annually select an Executive Committee, but such selection must be made by the vote of at least seven members. The duties and powers of such Committee shall be defined in the By-Laws.

The Board shall elect the officers of the corporation hereinafter provided for and shall have the power to enact and publish by-laws not inconsistent herewith, but such officers must be elected and such By-Laws enacted by the unanimous vote of the eight members of the Board. All vacancies occurring in the Board shall be filled by the stockholders at a special meeting in the manner heretofore provided for the election of Directors.

Which motion was adopted by the unanimous vote of all the stockholders of the corporation.

C. M. Hays moved that Article 5 be stricken out, and the following substituted in lieu thereof.

Article 5.

The officers of the corporation shall be President, Vice President, Secretary, and Treasurer (the offices of Secretary and Treasurer may be filled by one person) to be annually elected from the persons composing the Board of Directors as hereinbefore provided; and for that purpose, among others, the newly elected Board shall convene immediately after the adjournment of the annual meeting of the stockholders. Said officers shall hold their offices for one year and until their successors are elected and qualified, and they shall exercise such power and be charged with such duties as usually pertain to their respective offices, subject, however, to the limitations herein contained.

Which motion was adopted by the unanimous vote of all the stockholders of the corporation.

F. M. Hubbell moved that Article 9 be stricken out and the following substituted in lieu thereof:

Article 9.

These articles may be amended by a vote of more than seven eighths of all the stock in favor thereof, at a meeting of stockholders thereof, of which a notice containing the proposed amendments shall be mailed to each stockholders at his address as disclosed by the transfer books of the Company.

Which motion was adopted by the unanimous vote of all the stockholders of the corporation.

A. B. Cummins moved to add to said Articles of Incorporation Article 11 as follows:

Article 11.

Special meetings of the stockholders may be called by the President, or by four Directors; but at least ten days' notice of such meeting shall be given to each stockholder by mailing to its or his address as shown by the books of the Company, a notice stating the time and place of such meeting.

Which motion was adopted by the unanimous vote of all the stockholders of the corporation.

C. M. Hays moved to add to the Articles of Incorporation Article 12, as follows:

Article 12.

At all meetings of stockholders each stockholder shall be entitled to cast one vote for each share of stock owned by him, or it as may appear from the books of the Company, such vote may be cast either in person or by proxy; but if by proxy, written authority therefor must be filed with the Secretary at or before the time the meeting convenes.

Which motion was adopted by the unanimous vote of all the stockholders of the corporation.

L. M. Martin moved to add to the Articles of Incorporation Article 13, as follows:

Article 13.

It shall not be necessary in order to enable the corporation to carry on the business for which it is organized, that all its authorized capital stock be subscribed or taken.

Which motion was adopted by the unanimous vote of all of the stockholders of the corporation.

F. M. Hubbell moved to add to the Articles of Incorporation Article 14, as follows:

Article 14.

The purchase of the property heretofore conveyed to the corporation, the conveyances made in pursuance thereof, the execution of Trust Mortgage to the Central Trust Company of New York, dated February 28th, 1887, and recorded in the Recorder's office of the County of Polk, State of Iowa, on the 21st day of May, 1888, in book 196 at page 525 and the issuance of bonds secured by the same are hereby approved, ratified and confirmed.

Which motion was adopted by the unanimous vote of all the stockholders of the corporation.

C. M. Hays moved to add to the Articles of Incorporation Article 15, as follows:

Article 15.

The proceedings of a meeting held December 10, 1884, with certain preambles, including a contract executed on the 2nd day of January, 1882, between the Des Moines & St. Louis Railroad Company, the Des Moines Northwestern Railway Company and the St. Louis, Des Moines & Northern Railway Company, consented to by the Wabash, St. Louis & Pacific Railway Company, which now appears as part of the Articles of Incorporation of this Company, are hereby repealed, stricken out and expunged.

Which motion was adopted by the unanimous vote of all the stockholders of the corporation.

Upon motion of A. B. Cummins, it was ordered that the officers of the Company certify and acknowledge the Amendments to the Articles of Incorporation above adopted, and to cause the same to be recorded and published as required by law.

Thereupon A. B. Cummins offered the following preamble and resolution, to-wit:

Whereas, by inadvertence, there appears to be some uncertainty in the records of the Company respecting the purchase price of the terminal property originally acquired by the company, and

Whereas, it was the agreement between all the parties in interest that said property, including the franchise incident thereto, should be purchased at its fair value, payable partly in first mortgage bonds and partly in capital stock fully paid up, and

Whereas, it was and is agreed that said property was fairly worth the sum of eight hundred sixty one thousand two hundred and fifty seven and 21/100 dollars, of which purchase price the Des Moines & St. Louis Railroad Company, the Wabash, St. Louis & Pacific Railway Company or its representative, the Purchasing Committee, the said Purchasing Committee being now the real owner of the Des Moines & St. Louis Railroad, together were and are entitled to four hundred and seventy thousand one hundred and ten and 80/100 dollars (\$470,110.80) of said purchase price, the Des Moines Northwestern Railway Company was entitled to two hundred and fifteen thousand and fifty eight and 40/100 dollars (\$215,058.40) of said purchase price, the St. Louis, Des Moines & Northern Railway Company was entitled to one hundred thousand dollars (\$100,000.00) of said purchase price. G. M. Dodge to seventy four thousand and eighty eight and 01/100 dollars (\$74,088.01) of said purchase price and Polk & Hubbell to two thousand dollars (\$2,000.00) of said purchase price, and

Whereas, by a settlement heretofore had and now confirmed, it appeared that of such purchase price the Purchasing Committee of the Wabash, St. Louis & Pacific Railway Company, being the real owner of the railroad known as the Des Moines & St. Louis Railroad, has received two hundred and seventy (270) bonds of one thousand dollars each. G. M. Dodge seventy-four bonds; Polk & Hubbell two (2) bonds and the Des Moines & Northwestern Railway Company, successor of the Des Moines North Western Railway Company, one hundred and fifteen (115) bonds, making in all four hundred and sixty one bonds, and as a further part of such purchase price the Company has paid to the Purchasing Committee, G. M. Dodge and the Des Moines Northwestern Railway Company two hundred and fifty seven and 21/100 dollars in cash, and

Whereas, there still remains four hundred thousand dollars (\$400,000.00) of the purchase price of said property yet unpaid, which sum is to be paid in capital stock, and

Whereas, by agreement between the several persons and corporations owning the said property prior to the said transfer, so much of the purchase price as was to be paid in capital stock was to be divided among three corporations, to-wit: one-half to the Des Moines & St. Louis Railroad Company, one-quarter to the St. Louis, Des Moines & Northern Railway Company and one-quarter to the Des Moines North Western Railway Company, and

Whereas, the Purchasing Committee of the Wabash, St. Louis & Pacific Railway Company is now the owner of the property of the Des Moines & St. Louis Railroad Company,

including its proportion of stock, and the Des Moines & Northern Railway Company is now the owner of the property of the St. Louis, Des Moines & Northern Railway Company, including its proportion of said stock, and the Des Moines & North Western Railway Company is now the owner of the property of the Des Moines North Western Railway Company, including its proportion of said stock, and

Whereas, the Articles of Incorporation have been amended so as to conform to the true intent of the several parties,

It is therefore now Resolved, first

1st. That the purchase price of the property originally acquired by the Company, as above stated, be fixed at said sum eight hundred sixty one thousand, two hundred fifty seven and 21/100 (\$861,257.21) dollars as of the date of the conveyance thereof.

2nd. That the payment of a portion of such purchase price in first mortgage bonds, as above set forth, be confirmed and approved.

3rd. That to complete the payment of such purchase price, the President and Secretary are hereby authorized to issue certificates for thirty nine hundred and ninety two (3992) shares of stock, which shares, including eight already issued on behalf of said parties, aggregate four thousand (4000) shares, as follows:

To the Purchasing Committee of the Wabash, St. Louis & Pacific Railway Company, nineteen hundred and ninety six (1996) shares.

To the Des Moines & Northern Railway Company nine hundred and ninety eight (998) shares, and to the Des Moines & Northwestern Railway Company nine hundred and ninety eight (998) shares.

4th. That the proceedings heretofore had respecting the issuance of capital stock, so far as such proceedings are inconsistent with said amendments to the Articles of Incorporation or with this resolution, are hereby modified to conform hereto.

Upon motion, said preamble and resolutions were unanimously adopted.

Thereupon the resignation of Wells H. Blodgett as a Director was presented to the meeting and upon motion it was accepted.

Upon motion of F. M. Hubbell the stockholders proceeded to the election of a director to fill the vacancy so caused. The

election was had and resulted in the choice of H. D. Thompson by the unanimous vote of all the stockholders of the Company.

Upon motion the meeting of stockholders was adjourned to meet on the 22nd day of April, 1890, at ten o'clock A. M.

F. M. HUBBELL,
Secretary.

Plffs. Exhibit No. 29.

Respecting Surplus Earnings of Des Moines Union Ry. Co.

Meeting of the Directors of the Des Moines
Union Railway Company.

February 11th, 1891.

Upon the adjournment of the meeting of the stockholders of this Company, G. M. Dodge, Jas. F. How, C. M. Hays, F. M. Hubbell, L. M. Martin, F. C. Hubbell, and A. B. Cummins, of the persons chosen as directors for the ensuing year, met at the office of this Company. H. D. Thompson being represented by written proxy given to F. M. Hubbell.

G. M. Dodge was selected as Chairman of the meeting. He stated the first business before the meeting to be the election of a President, Vice President, Secretary and Treasurer, to hold their offices for the ensuing year and until their successors are duly elected and qualified.

It was moved that G. M. Dodge be elected President, A. B. Cummins, Vice President, and F. M. Hubbell, Secretary and Treasurer, and the above named directors were elected by the unanimous vote of all of the directors, to fill the offices for which they were nominated as above.

On motion, F. M. Hubbell, C. M. Hays and L. M. Martin were elected as the Executive Committee of this Company for the ensuing year.

The report of Horace Seely, Treasurer, was read and filed.

It was ordered that the rents collected for the use of the Company's real estate, and the switching charges paid in, be credited on the bills of the different tenant companies occupying this Company's terminals, giving to each Company its share ascertained by wheelage.

Whereupon the Board adjourned until February 12th, at ten o'clock A. M.

F. M. HUBBELL,
Secretary.

Plffs. Exhibit No. 30.

Respecting Surplus Earnings of Des Moines Union Ry. Co.
Proceedings had at Meeting of Board of Directors of the Des Moines Union Railway Company,

Held at its office in Des Moines on the 7th day of January 1892.

Upon the adjournment of the regular annual meeting of the stockholders of the Company, C. M. Hays, F. M. Hubbell, L. M. Martin, F. C. Hubbell, A. B. Cummins, H. D. Thompson and A. N. Denman, being seven of the persons chosen as directors for the ensuing year, met at the office of the Company, director G. M. Dodge being represented by written proxy to L. M. Martin, duly filed.

Upon motion, C. M. Hays was elected Chairman of the meeting.

Whereupon, he stated the first business of the meeting to be the election of a President, Vice President, Secretary and Treasurer, to hold their offices during the ensuing year, and until their successors are duly elected and qualified.

It was moved that F. C. Hubbell be elected President, A. B. Cummins, Vice President, F. M. Hubbell, Secretary, and H. D. Thompson, Treasurer.

Whereupon, these nominations being submitted to the vote of the Directors, each of the persons above named received the unanimous vote of all the Directors, and were declared duly elected as follows:

F. C. Hubbell,	President.
A. B. Cummins,	Vice President.
F. M. Hubbell,	Secretary.
H. D. Thompson,	Treasurer.

F. C. Hubbell, President, presiding.

On motion of A. B. Cummins, duly seconded, F. C. Hubbell, C. M. Hays and L. M. Martin were elected as members of the Executive Committee for the ensuing year.

On motion of L. M. Martin, duly seconded, the following preamble and resolution were adopted by the unanimous vote of all the Directors.

Whereas, this Company is in need of a cash capital with which to purchase supplies and pay current bills which come in before it receives its monthly revenue from the tenant companies,

Therefore, Be It Resolved: That until the further action of the Board the sums received as rents of real estate and all switching charges shall not be credited upon the accounts of the tenant companies, but shall be used for the aforesaid purposes.

F. M. Hubbell moved that \$9,000.00 of the cost of the new freight depot, less proceeds of old freight depot, be charged to operation, and the remainder of its cost to be capitalized, and that the President be authorized to withdraw sufficient bonds to pay for so much of the cost of said freight depot as is not to be charged to operation as above set forth, and that the Trustee be requested to certify and deliver such bonds to the President.

The motion was duly seconded and unanimously adopted.

Upon motion, it was ordered that the Treasurer of the Company pay to G. M. Dodge, the retiring President, \$1000.00 as full compensation for his expenses, and services rendered to this Company to this date as President or otherwise, the said sum to be charged as a part of the operating expenses of the Company.

Upon motion, the Board of Directors adjourned to meet at three o'clock in the afternoon of this day.

F. M. HUBBELL,
Secy.

PLAINTIFFS' EXHIBIT No. 31.*

Stipulation of Counsel, respecting Annual Reports of Des Moines Union Railway Company, to Executive Council of State of Iowa, for the purpose of the assessment of its property for taxation by said council, for the year ending December 31st, 1888.

For the purpose of abbreviating the record as far as practicable, in the above entitled cause, it is agreed that the Annual Reports of the Des Moines Union Railway Company, for the above mentioned years, are all in substantially the same form; that each contains the name of the Company; the name of its

*NOTE:—For stipulation covering Plaintiff's Exhibits Nos. 31, 32, 33, 34, 35 and 36, see page 271 of this record.

officers; its place of business, and a description of its real and personal property.

Said real property so described includes by specific description each of the lots and parcels of ground described in the following deeds:

Deed from James F. How to Des Moines Union Railway Company, dated November 19th, 1887, identified in stipulation between the parties as Plaintiffs' Exhibit #17.

Deed from James F. How to Des Moines Union Railway Company, dated December 10th, 1887, identified in said stipulation between the parties as Plaintiffs' Exhibit #18.

Deed from James F. How to Des Moines Union Railway Company, dated April 28th, 1888, and identified in said stipulation between the parties as Plaintiffs' Exhibit #19.

Deed from G. M. Dodge to Des Moines Union Railway Company, dated November 7th, 1887, identified in said stipulation as Plaintiffs' Exhibit #20.

Deed from St. Louis, Des Moines & Northern Railway Company to Des Moines Union Railway Company, dated November 7th, 1887, identified in said stipulation as Plaintiffs' Exhibit #21.

Deed from Des Moines & St. Louis Railroad Company to Des Moines Union Railway Company, dated February 21st, 1888, identified in said stipulation as Plaintiffs' Exhibit #22.

That the names of the officers of the Company for the year ending December 31st, 1888, are therein stated to be as follows:

President,	G. M. Dodge,	No. 1 Broadway, New York.
Vice President,	James F. How,	St. Louis, Mo.
Secretary,	F. M. Hubbell,	Des Moines, Iowa,
Treasurer,	F. M. Hubbell,	" " "
General Superintendent,	J. B. Van Dyne,	" " "
Auditor,	D. V. Van Dyne,	" " "

James F. How, above named as Vice-President was during the year covered by the said report, the General Agent for the Receivers of the Wabash, St. Louis and Pacific Railway Company, and the General Agent for the Purchasing Committee of the holders of bonds issued by the said Company and in process of foreclosure.

Schedule 5 of said Report is headed:

"Gross earnings for the year ending December 31st, 188.. of road operated within this State", and is followed by a form divided into columns headed respectively:

Name of line	a
From passengers	b
From freight	c
From express service	d
From mail service	e
From telegraph service	f
From track rent	g
From car rent	h
Miscellaneous	i

The only thing stated in this schedule 5 is the following, which is written across the columns headed "c to H inclusive":

"General Remarks"

"The Des Moines Union Railway Company is simply a 'Representative Company', acting as an agency at Des Moines for the Wabash Western Railway Company, the Des Moines and Northwestern Ry., Company, and the St. Louis, Des Moines and Northern Railway Company; performing all the necessary work for them, and charging each road its due proportion of the expenses, thereby incurred, etc. (at actual cost)."

That said report was signed and verified on March 19th, 1889,

By James F. How,
Vice President of the
Des Moines Union Ry.,
and

On March 25th, 1889,

By J. B. VanDyne,
General Superintendent
of the Des Moines
Union Ry.

On opposite page to Schedule 5 is page headed:

"Schedule 6, Operating Expenses (Taxes included) roads in this State for the year ending December 31st, 188—."

This schedule is divided into columns, the columns having appropriate headings as to the various items making up operating expenses. The only entry under this schedule is the following:

"See General Remarks."

"PLAINTIFFS' EXHIBIT No. 32."

Stipulation of Counsel, respecting Annual Report of Des Moines Union Railway Company, to Executive Council of State of Iowa, for the purpose of the assessment of its property for taxation by said council, for the year ending December 31st, 1889.

That the names of the officers of the Company for the year ending December 31st, 1889, are stated to be as follows:

President,	G. M. Dodge,	No. 1 Broadway, New York.
Vice President	James F. How,	St. Louis, Mo.
Secretary,	F. M. Hubbell,	Des Moines, Iowa,
Treasurer,	Horace Seely,	" " "
Gen. Supt.	Horace Seely,	" " "
Auditor,	W. S. Godfrey,	" " "

The said James F. How continued to be General Agent as aforesaid until August 1st, 1889, when he became a Vice President of the Wabash Railroad Company, and its chief executive officer in the west.

The said report for the year ending December 31st, 1889, contains schedule 5 in the form above set out, and the only return made under said schedule was the following:

"General Remarks."

"The Des Moines Union Railway Company is simply a 'Representative Company', acting as an agency at Des Moines for the Wabash Railroad Company, the Des Moines and Northwestern Ry., Co., and the Des Moines and Northern Railway Company, performing all necessary work for them and charging each road (at actual cost), its due proportion of the expense thereby incurred."

And that said report was signed and verified on February 13th, 1890,

By Horace Seely,
General Superintendent of the Des
Moines Union Ry., Co.

PLAINTIFFS' EXHIBIT No. 33.

Stipulation of Counsel, respecting Annual Report of Des Moines Union Railway Company, to Executive Council of State of Iowa, for the purpose of the assessment of its property for taxation by said council, for the year ending December 31st, 1890.

That the names of the officers of the Company for the year ending December 31st, 1890, are stated to be as follows:

President,	G. M. Dodge,	No. 1 Broadway, New York.
Vice President,	A. B. Cummins,	Des Moines, Iowa,
Secretary,	F. M. Hubbell,	" " "
Treasurer,	F. M. Hubbell,	" " "
General Superintendent,	Horace Seely,	" " "
Auditor,	Horace Seely,	" " "
	(Acting)	" " "

This Report contained a schedule 5 similar in form to schedule 5 in the said Report of December 31st, 1888, and contained no report under schedule 5 except the following:

"General Remarks."

"The Des Moines Union Ry. Co., is simply a representative company, acting as an agency at Des Moines for the Wabash Railroad Company, the Des Moines & Northwestern Railway Company, and the Des Moines & Northern Ry. Co., performing all necessary work for them and charging each at actual cost, its due proportion for the expense thereby incurred."

And that said report was signed and verified on February 14th, 1891,

By A. B. Cummins,
Vice President of the Des Moines
Union Ry. Co., and.

Horace Seely,
General Superintendent of the Des
Moines Union Ry., Co.

PLAINTIFFS' EXHIBIT NO. 34.

Stipulation of Counsel, respecting Annual Report of Des Moines Union Railway Company, to Executive Council of State of Iowa, for the purpose of the assessment of its property for taxation by said council, for the year ending January 1st, 1892.

That the names of the officers of the Company for the year ending January 1st, 1892, are stated to be as follows:

President,	F. C. Hubbell,	Des Moines, Ia.
Vice President,	A. B. Cummins,	
Secretary,	F. M. Hubbell,	
Treasurer,	H. D. Thompson,	
General Solicitor	A. B. Cummins,	
General Super- intendent,	Horace Seely,	
Auditor,	Charles Seely.	

The report contained a schedule 5 similar in form to schedule 5 in the said Report of December 31st, 1888, and contained no report under schedule 5 except the following:

"General Remarks."

"The Des Moines Union Railway Company is simply a representative company, acting as an agency at Des Moines for the Wabash Railroad Company and the Des Moines, Northern and Western Railway Company, performing all necessary work for them, and charging each at actual cost, its due proportion for the expense thereby incurred."

And that said report was signed and verified on February 24th, 1892,

By F. C. Hubbell,
President of the Des Moines Union
Railway Company, and,

Horace Seely,
General Superintendent of the Des
Moines Union Railway Company.

PLAINTIFFS' EXHIBIT NO. 35.

Stipulation of Counsel, respecting Annual Report of Des Moines Union Railway Company, to Executive Council of State of Iowa, for the purpose of the assessment of its property for taxation by said Council, for the year ending January 1st, 1893.

That the names of the officers of the Company for the year ending January 1st, 1893, are stated to be as follows:

President,	F. C. Hubbell,	Des Moines, Iowa,
Secretary,	F. M. Hubbell,	" " "
Treasurer,	H. D. Thompson,	" " "
General Super- intendent,	J. A. Wagner,	" " "
Auditor,	E. G. Mitchell,	" " "

This report contained a schedule 5 similar in form to schedule 5 in the said Report of December 31st, 1888, and contained no report under schedule 5 except the following:

“General Remarks.”

The Des Moines Union Railway Company is simply a representative company, acting as an agency for the Wabash Railroad Company, and the Des Moines, Northern & Western Railway Company, performing all necessary work for them, and charging each at actual cost, its due proportion thereof incurred.”

And that said report was signed and verified on February 28th, 1893,

By A. B. Cummins,
Vice President of the Des Moines
Union Ry. Co., and,

J. A. Wagner, -
General Superintendent of the Des
Moines Union Ry., Co.

PLAINTIFFS' EXHIBIT No. 36.

Stipulation of Counsel, respecting Annual Report of Des Moines Union Railway Company, to Executive Council of State of Iowa, for the purpose of the assessment of its property for taxation by said Council, for the year ending January 1st, 1894.

That the names of the officers of the company for the year ending January 1st, 1894, are stated to be as follows:

President,	F. C. Hubbell,	Des Moines, Ia.
Vice President,	A. B. Cummins,	" " "
Secretary,	F. M. Hubbell,	" " "
Treasurer,	H. D. Thompson,	" " "
General Superintendent,	J. A. Wagner,	" " "
Auditor,	E. G. Mitchell,	" " "

The report contained a schedule 5 similar in form to schedule 5 in the said Report of December 31st, 1888, and contained no report under schedule 5 except the following:

"General Remarks."

"The Des Moines Union Railway Company is the owner of the property hereinbefore described, and in addition to leasing the same to the Wabash Railroad Company, the Des Moines, Northern and Western Railway Company, and the Chicago, Great Western Railway Company, performs certain services for these companies and collects from them as rental and for such services, the aggregate amount of its expenses, which expenses are paid by the several railway companies in proportion to the use of the property and services rendered, as provided by contracts existing between this company and the said Wabash Railroad Company, Des Moines, Northern & Western Railway Company, and Chicago, Great Western Railway Company."

And that said report was signed and verified on February 16th, 1894,

By A. B. Cummins,
Vice President of the Des Moines
Union Ry. Co., and

J. A. Wagner,
Superintendent of the Des Moines
Union Ry. Co.,

Plffs. Exhibit No. 37.

Ratification Agreement of July 31, 1897.

This Agreement of ratification and confirmation, entered into this 31st day of July, 1897, between the Des Moines Union Railway Company, a corporation organized and existing under the laws of the State of Iowa, and hereinafter called the Des Moines Company, the Wabash Railroad Company, a corporation organized and existing under the laws of the State of Missouri, and hereinafter called the Wabash Company, and the Des Moines Northern & Western Railroad Company, a corporation organized and existing under the laws of the State of Iowa, and hereinafter called the Des Moines, Northern & Western Company,

Witnesseth that:

Whereas, on the 10th day of May, 1889, the said Des Moines Union Railway Company, the Des Moines & St. Louis Rail-

road Company, the Des Moines & Northwestern Railway Company, and the St. Louis, Des Moines & Northern Railway Company, entered into a certain contract, a copy of which, for complete identification, is hereto attached, marked Exhibit "A"; and,

Whereas, the said Wabash Company is not named in said contract, and now operates the Des Moines & St. Louis Railroad; and

Whereas, the Des Moines & Northwestern Railway Company, and the St. Louis, Des Moines & Northern Railway Company have ceased to own or operate the respective railroads which were owned and operated by them at the time the said contract was made, and the said Des Moines Northern & Western Company has become the owner of and operates the lines of railroad which were formerly owned and operated by the said Des Moines & Northwestern Railway Company and the said St. Louis, Des Moines & Northern Railway Company; and

Whereas, for a long time past both the Wabash Company and the Des Moines, Northern & Western Company have been using the terminal property described in said contract and all the parties have recognized the said contract as continuing and binding upon them; and

Whereas, it has been doubted whether the said contract is legally binding upon the said Wabash Company and the said Des Moines, Northern & Western Company;

Now Therefore, in consideration of the premises and for the purpose of removing all doubt with respect to the said subject, it is now agreed by and between the parties hereinbefore named that the said contract, a copy of which is attached, shall be and become binding and obligatory upon said Wabash Company and the Des Moines, Northern & Western Company.

And the said Wabash Company for itself agrees to make the payments therein provided for at the times and in the manner prescribed for the said Des Moines & St. Louis Railroad Company so long as it operates the railroad of the said Des Moines & St. Louis Company, and when the said Wabash Company ceases to operate the railroad of the said Des Moines &

St. Louis Company its obligation to so pay, and all the obligations herein assumed by it, shall at once determine and

be and become the obligations of whatever company operates the said railroad, it being the intention that the obligations of the said contract, so far as they pertain to the Des Moines & St. Louis Railroad Company, shall attach to and become the obligations of the successor of the said Wabash Company in the operation of the said Des Moines & St. Louis Railroad, and any company succeeding the Wabash Company in such operation shall be held by the operation of trains over the said Des Moines & St. Louis Railroad, and upon the property leased in the said contract, to assume all the obligations therein or hereby undertaken by either the said Des Moines & St. Louis Company or the said Wabash Company.

And the said Des Moines, Northern & Western Company for itself agrees to assume all the obligations of a lessee railroad company as prescribed in the said contract for the entire term named therein, and as though it had been named in and was a party to the said contract when originally made, and to pay to the said Des Moines Company at the times and in the manner therein prescribed the sums of money which may become due, computed according to the terms and provisions of the said contract with respect to a tenant company; and the said Des Moines, Northern & Western Company further agrees that the obligations therein named and hereby assumed shall pass with the railroad it now owns and operates, and shall become the obligations of any assignee, grantee, or successor of the said Des Moines, Northern & Western Company in the ownership or operation of the said Des Moines, Northern & Western Railroad, and any company succeeding the Des Moines, Northern & Western Company, in such ownership or operation shall be held by the operation of trains over the said Des Moines, Northern & Western Railroad, and upon the property leased in the said contract, to assume all the obligations therein expressed and herein undertaken by said Des Moines, Northern & Western Company.

But it is expressly provided that so much of the said contract, a copy of which is hereto attached, as relates to the issuance and the distribution of the capital stock of the said Des Moines Company, is no longer binding, and that the capital stock of the said Des Moines Company is held as follows:

The purchasing committee of the Wabash, St. Louis & Pacific Railway Company, 500 shares.

The Des Moines Northern & Western Railroad Company, 1,000 shares.

F. M. Hubbell & Son, 2,500 shares.

Of the above shares belonging to said purchasing committee two shares, stand upon the books of the company as follows: Joseph Ramsey, Jr., 1 share; and H. L. Magee, 1 share.

Of the shares belonging to the Des Moines Northern & Western Railroad Company two shares stand upon the books of the company as follows: A. B. Cummins, 1 share; and F. M. Hubbell, 1 share.

Of the shares belonging to said F. M. Hubbell & Son, five shares stand upon the books of the company as follows: F. M. Hubbell, 1 share; F. C. Hubbell, 1 share; C. Huttenlocher, 1 share; H. D. Thompson, 1 share; A. N. Denman, 1 share.

In Witness Whereof, The respective parties hereto have caused these presents to be signed by their respective presidents and sealed with their corporate seals, and attested by their respective secretaries, the day and year first above written.

(Seal) THE WABASH RAILROAD COMPANY,
By O. D. Ashley,
President.

Attest:
J. C. Otteson,
Secretary.

(Seal) DES MOINES UNION RAILWAY COM-
PANY,
By F. C. Hubbell,
President.

Attest:
F. M. Hubbell,
Secretary.

(Seal) DES MOINES, NORTHERN & WESTERN
RAILROAD COMPANY,
By F. M. Hubbell,
President.

Attest:
A. N. Denman,
Secretary.

Plffs. Exhibit No. 38.

Mortgage.

The Des Moines and St. Louis Railroad Company
to
The Central Trust Company and James Cheney, Trustees.

This Indenture made and entered into this first day of December in the year one thousand Eight Hundred and Eighty one by and Between the Des Moines and St. Louis Railroad Company, a corporation organized and Existing under and by virtue of the laws of the State of Iowa of the first part and The Central Trust Company of New York and James Cheney Trustees of the second part Witnesseth:

Whereas by the terms of a contract of subscription made by and between the Party of the first part and certain Persons subscribers to its capital stock it was mutually stipulated and agreed that the construction and equipment of the Railroad of the Party of the first part should be in full payment of the said subscriptions to the capital stock of said Company and also that the subscribers to said capital stock should jointly receive in payment for such construction and equipment in addition to the said stock the entire amount of fifteen thousand dollars per mile in Mortgage Bonds of the Wabash, St. Louis and Pacific Railway Company secured by the General Mortgage of the last named Company.

And Whereas it has been mutually agreed by and between the said Des Moines and St. Louis Railroad Company the subscribers to its Capital Stock and the Wabash, St. Louis and Pacific Railway Company that bonds of the last named Company as aforesaid shall be executed and delivered to the said Des Moines and St. Louis Railroad Company to be used in part payment for construction and equipment as aforesaid and also that the Des Moines and St. Louis Railroad Company, Party of the first part shall execute and deliver to said Wabash, St. Louis and Pacific Railway Company a lease in perpetuity of said Railroad and that said Wabash St. Louis and Pacific Railway Company shall thereafter operate said Railroad continuously under said lease and upon the conditions and agreements to be covenanted therein providing for the operation and maintenance of said railroad the payment of all taxes and assessments thereon. The protection by the said Wabash, St. Louis and Pacific Railway Company of the interest on the mortgage bonds aforesaid and any further payment which due proportion of the earnings of said Railroad may hereafter render just the bonds aforesaid to form the principle consideration of said lease and also that the General Mortgage Bonds of the Wabash, St. Louis and Pacific Railway Company aforesaid shall be secured by a first Mortgage upon the Railroad property of the said Des Moines and St. Louis, Railroad Company to the extent of the par value of so many of said Bonds as shall be issued in part payment for construction and equipment of the railroad of the last named company as aforesaid.

And Whereas the said Des Moines and St. Louis Railroad Company has obtained its right of way and is now completing its road.

And Whereas the issue of bonds for the purpose aforesaid is provided for in the General Mortgage executed to the Trustees named herein by the Wabash St. Louis and Pacific Railway Company, bearing date June 1st, 1880, providing for the issue of fifty thousand bonds of the denomination of \$1,000, payable on the first day of June, A. D. 1920, and bearing interest at the rate of six per centum per annum payable semi annually.

And Whereas the completing leasing and operating the said Railroad is deemed necessary to the Wabash, St. Louis and Pacific Railway Company for the completion of a proper extension of its railway system.

Now Therefore in consideration of the premises and the sum of one dollar to it in hand paid by the Wabash, St. Louis and Pacific Railway Company before the delivery of these presents and to further assure the holders of the bonds issued under the provisions of said General Mortgage made as aforesaid by the Wabash, St. Louis and Pacific Railway Company to the extent of fifteen thousand dollars per mile of the road of the Des Moines and St. Louis Railroad Company the said the Des Moines and St. Louis Railroad Company by this indenture doth grant, bargain, sell, convey, and transfer unto the said Central Trust Company of New York and James Cheney of Indiana as Trustees and to their successors in Trust all the right of way and railroad of the said first party extending from the eastern boundary line of the City of Des Moines in the State of Iowa, to Albia in said State running through the counties of Polk, Marion and Monroe together with all its Real Estate embankments, bridges, turn outs, side tracks, buildings and structures, water tanks and fixtures, shops, engine and other houses depots, turn tables, engines, cars, machinery, tools and all its railroad property acquired and to be acquired and every thing appurtenant to said Railroad or used in connection therewith together with all rents issues and profits tolls and earnings, credits and choses in action, accruing to said first party from said railroads as owner and holder thereof, except the Real Estate, buildings and improvements thereon lying and being within the corporate limits of the City of Des Moines. To have and to hold the said property, real and personal, including the said Railroads, appurtenances, equipment, franchises, rights, credits and choses in action and every interest herein granted unto the said Trustees as joint tenants and not as tenants in common and the survivor of them his heirs and successors. But in trust nevertheless for the uses and purposes declared in and by the General Mortgage

made and executed by the said Wabash, St. Louis and Pacific Railway Company to the said Trustees herein as aforesaid subject to the limitations herein contained.

If the said Wabash, St. Louis and Pacific Railway Company or its successors or assigns shall well and truly pay or cause to be paid the several sums of money specified in the several bonds of the issue provided for in the General Mortgage aforesaid as well the principal as the installments of interest according to the tenor and effect of said bonds and of each and every of them and of the laws of the several States of Ohio, Indiana, Illinois and Missouri or of said bonds and the interest payable thereon become in any wise paid or satisfied then and in such case the estate, right, title, interest, and demand of the said parties of the second part, their successors in said trust and assigns shall cease determine and become void otherwise to be and remain in full force and virtue in law and for the benefit and security of the holders of said bond and each of them. Until default be made in the payment of the principal or interest of said bonds or of some or any of them the said Railway Company shall be permitted to possess operate manage and enjoy said railroad with its appurtenances and to take and use the rents incomes tolls, issues and profits thereof in the same manner and with the same effect as if this deed had not been executed.

In case default shall be made in the payment of any installment of interest accruing on said bonds or any of them and such default shall continue for a period of six months after the maturity thereof it shall be lawful for said parties of the second part or their successors in said Trust by themselves their agents or attorneys to enter upon take possession of, manage, operate and control the railroad and property hereby conveyed owned or held by lease, contract or otherwise by superintendents receivers and managers thereof making from time to time all needful repairs replacements and such alterations, additions and improvements as may seem to be judicious and proper and to collect and receive all rents, tolls, incomes, issues and profits thereof and after deducting the expenses of operating said railroad and property and lease hold interest and all costs of improvements and any taxes that may have accrued thereon as well as just and reasonable compensation for their own work and labor in and about the premises to apply the moneys arising therefrom to the payment of interest in the order in which it becomes due and ratably to the persons entitled thereto and when said interest so in default and any installment of interest subsequently maturing shall be paid up then said parties of the second part shall restore

the possession of said railroad to the said party of the first part.

If default shall occur in the payment of any installment of interest and such default continue for the space of six months after maturity and demand therefor then if a majority in value of the holders of said bonds then outstanding and secured by this mortgage shall determine and notify said trustees that they require that the principal of all of said bonds become at once due and payable, said bonds shall thereby become due and payable notwithstanding any clause contained therein to the contrary and if said principal sum shall become due and not paid by said first party according to the tenor of said bonds and upon written notice by the holders of a majority of the bonds issued and outstanding under the authority hereinbefore mentioned the said trustees shall have the power and it shall be their duty to proceed in any proper tribunal to foreclose said mortgage according to the usual and established principles of law and equity. But it is expressly understood and agreed between the parties, that in no case whatever shall the party of the first part claim any right or advantage by reason of any valuation appraisement stay or extension laws that now exist or may hereafter be enacted and said first named party hereby releases to the second parties all and every such right claim and demand and hereby further agrees that it will neither apply for an injunction nor any stay of proceedings to arrest or prevent such sale from being made or possession being taken as hereinbefore provided. It is hereby expressly declared that this instrument is made and the trust herein declared upon condition that if any sale shall be made under and by virtue of this Mortgage whether by Judicial decree or foreclosure or otherwise the holders of a majority of the said bonds then outstanding shall have the right to have said premises and all property herein embraced, purchased for the use and benefit of all the holders of said then outstanding bonds.

In case such sale shall be made then the holders of the majority of said bonds outstanding shall have the right by notice in writing in their discretion either to require the said trustees or their successors to make such purchase on such terms as they may prescribe.

And if the holders of a majority of said outstanding bonds shall elect to have said purchase made as aforesaid and shall prescribe the terms on which they desire to make the same then it shall be the duty of the said Trustees or their successors to make such purchase if the same can be made on the terms so prescribed and having so purchased said premises and

property the right and title thereto shall vest in the said trustees for the use aforesaid and no bond holder shall have any claim to the said premises or property or the proceeds thereof except his pro rata share therein as represented by a new company or corporation to be formed for the use and benefit of the holders of all said bonds then outstanding. And said trustees shall take such lawful measures as may be deemed for the interest of all said bond holders to organize a new company or corporation said company or corporation to be so organized upon such terms, conditions and limitations and in such manner as the holders of a majority of said outstanding bonds shall in writing request or direct. And thereupon the said Trustees shall convey said premises and property to the new company or corporation. And it is hereby declared that all persons who shall claim any interest benefit or advantage by virtue of this instrument or the trust hereby created shall take the same subject to all the terms herein contained and subject to all the rights and powers conferred by this instrument on the holders of a majority of the bonds hereby secured.

It is further declared that in case of any sale of the premises and property embraced herein by decree of any court or otherwise the holders of a majority of the bonds then outstanding shall have the right to determine whether said premises and property shall or shall not be sold subject to all prior encumbrances and such majority shall sufficiently manifest their determination in such respect by giving notice thereof in writing to the trustees at any time before such sale is made. In case of the resignation or incapacity of the trustees or either of them herein named to act as trustees or in case of the death, resignation or incapacity to act of any successor of said Trustees it shall be the duty of the Board of Directors of said Railway Company immediately thereafter to make application to some proper court of record at the county where the General Office of said Railway Company is located for the appointment of some suitable person, persons or corporation to become the successor of said Trustees and thereupon the person, persons or corporation so appointed shall be and are hereby vested with all the estate rights and privileges and liable to all the duties by this instrument conferred upon or to the parties of the second part to the same extent as if each person, persons or persons or corporation were herein named. It is hereby agreed and understood that for the better assurance to the parties of the second part and to the holders of the bonds secured by this instrument that the party of the first part will on demand at any and all times hereafter make execute and deliver all such other and further conveyances and assurances as said trustee of their successors by

their counsel shall reasonably advise, devise or require for the better assuring unto the said Trustee and their successors by their counsel shall reasonably advise, devise or require for the better assuring unto the said Trustees and their successors in the trust hereby created the said railroad with the appurtenances, equipment and property hereinbefore described or intended so to be and all other property belonging to said party of the first part now owned or hereafter to be acquired as above provided and set forth or any and all the franchises now held or hereafter to be acquired by the party of the first part. Whenever it shall happen from changes required to be made in said Railroad and appurtenances that any parcels of property whether real or personal have become unnecessary or useless to said Railroad Company for its business by reason of change of line or depot or other grounds or when any of the personal property shall have become worn out or inefficient and unnecessary to the operation of said railroad then and in such case it shall be lawful for the directors of said railway Company to make sales exchanges or other disposition of such parcels of real or personal property as they may deem for the best interest of said railway company and upon the sale or exchange of such property for any other and when any other property shall be acquired in the place of such property the same shall held subject to the lien of this mortgage as if it was the property of said Company at the date hereof and the parcels of property so held or disposed of by said Directors shall be exempt from the lien herein created. It is further agreed that neither of said Trustees shall be required to take any action under this Deed in the event of default until the party asking such action shall have indemnified such trustee for expenditure necessarily involved.

And the Des Moines and St. Louis Railroad Company covenants and agrees to and with the Trustees named in the said General Mortgage executed as aforesaid by the Wabash, St. Louis and Pacific Railway Company and their successors in trust that all its Railroad and property above described shall be charged with the lien of said General Mortgage and subject to its provisions as a security for the payment of the bonds therein described and provided to the extent and amount of the par value of so many of said bonds as are issued as aforesaid but not to exceed fifteen thousand dollars per mile.

In Witness Whereof the said party of the first part that is to say the Des Moines and St. Louis Railroad Company has caused these presents to be signed in its incorporate name by its President and attested by its Secretary and

has caused the corporate seal of said Company to be hereunto affixed as authorized and directed by its Board of Directors the day and year above written.

DES MOINES AND ST. LOUIS RAILROAD COMPANY.

By J. S. Clarkson, President.

Attest: F. M. Hubbell, Secretary.

Signed and Sealed in the presence of Howard M. Kellog.

State of Iowa,
Polk County of—ss.

Be it remembered that on this sixth day of March 1882 Personally came before me the undersigned a Notary Public within and for the County aforesaid, J. S. Clarkson who being by me duly sworn doth depose and say that he is the president of the Des Moines and St. Louis Railroad Company, grantor in the foregoing instrument that the name of said company is signed to said instrument by him as President of said Company by virtue of the order of the Board of Directors that the seal of the company attached thereto is the proper and genuine seal of said company and is affixed thereto by order of said Board of Directors. And the said J. S. Clarkson as President acknowledged the foregoing instrument to be the act and deed of the Des Moines and St. Louis Railroad Company for the uses and purposes therein expressed.

In Witness Whereof I have hereunto set my hand and affixed my notarial seal of office this 6th day of March 1882.

(Notarial Seal)

FRANK H. PERRY,
Notary Public, Polk Co. Iowa.

State of Iowa,
County of Polk—ss.

Be it remembered that on this sixth day of March 1882 personally came before me the undersigned a Notary Public within and for the county aforesaid F. M. Hubbell who being by me duly sworn depose and say that he is the secretary of the Des Moines and St. L. is Railroad

Company grantor in the foregoing instrument. That he countersigned the said instrument and affixed the seal of said company thereto by order of the Board of Directors thereof.

In Witness Whereof I have hereunto set my hand and affixed my notarial seal of office this 6th day of March 1882.

(Notarial Seal)

FRANK H. PERRY,
Notary Public, Polk Co. Iowa.

Filed April 28, 1882. at 11 $\frac{3}{4}$ A. M.

J. J. PAYNE,
Recorder.

State of Iowa,
Polk County—ss.

I, Mrs. Frank W. Dodson, Recorder of said County, hereby certify that the foregoing writing is a copy from the original record in my office, and of the whole thereof, and recorded in book 104, page 446.

Dated at Des Moines, Iowa, in said County, this the second day of April A. D. 1910.

MRS. FRANK W. DODSON,
Recorder.

Plffs. Exhibit No. 39.

Release Deed.

The Central Trust Company of New York, and
James Cheney, Trustees,
to

The Des Moines and St. Louis Railroad Company.

This Deed made and entered into this Thirteenth day of November, A. D. one thousand eight hundred and ninety-five, by and between the Central Trust Company of New York, and James Cheney, Trustees, of the first part, and the Des Moines & St. Louis Railroad Company, of the second part:

Witnesseth:

That Whereas, The said Des Moines & St. Louis Railroad Company, did, on or about the first day of December, A. D.

1881, execute and deliver a certain deed of trust or mortgage wherein and whereby, in consideration of the premises therein recited and of the sum of One Dollar to it paid, it did grant, bargain, sell, convey and transfer to said Central Trust Company of New York and James Cheney, Trustees, and to their successors in said trust, all the right of way and railroad of said Des Moines & St. Louis Railroad Company, extending from the eastern boundary line of the City of Des Moines, in the State of Iowa, to Albia in said State, running through the counties of Polk, Marion and Monroe, together with all its real estate, embankments, bridges, turn-outs, side-tracks, buildings and structures, water-tanks and fixtures, shops, engines and other houses, depots, turn-tables, engines, cars and machinery, tools and all its railroad property acquired and to be acquired, and everything appurtenant to said railroad, or used in connection therewith, together with all rents, issues and profits, tolls and earnings, credits and choses in action accruing to said Des Moines and St. Louis Railroad company as owner and holder thereof, except the real estate, buildings and improvements thereon, lying and being within the corporate limits of said City of Des Moines. To Have and to Hold the said property, real and personal, including the said railroad, appurtenances, equipment, franchises, rights, credits, and choses in action, and every interest therein granted unto the said Trustees, as joint tenants, and not as tenants in common, and the survivor of them, his heirs and successors, but in trust nevertheless for the uses and purposes declared therein and in a certain other mortgage or deed of trust, executed by the Wabash, St. Louis and Pacific Railway Company to said Central Trust Company of New York, and James Cheney, on or about the first day of June, 1880, which latter mortgage is commonly known as the "General Mortgage" of the Wabash, St. Louis & Pacific Railway Company; and Whereas, The Mortgage executed as aforesaid by the Des Moines & St. Louis Railroad Company, to said Central Trust Company, and James Cheney was made to secure the bonds of said Wabash, St. Louis & Pacific Railway Company, which were mentioned and described in its General Mortgage aforesaid and Whereas, Said General Mortgage of the Wabash, St. Louis & Pacific Railway Company has been duly foreclosed and all the bonds secured thereby have been surrendered and cancelled, and a new com-

pany or corporation has been organized as provided for in said General Mortgage, which new corporation is known as the Wabash Railroad Company; and Whereas, said new corporation has succeeded to all legal and equitable rights of the holders of said General Mortgage Bonds; and Whereas, Said Wabash Railroad Company is now the equitable owner of all the Capital Stock of said Des Moines & St. Louis Railroad Company, the same having been purchased and now being held in trust for it by a Purchasing Committee composed of James F. Joy, Thomas H. Hubbard, O. D. Ashley and Edgar T. Wells, and Whereas, Said Wabash Railroad Company has by resolution of its Board of Directors requested the aforesaid Trustees to execute this deed of release, Now Therefore, In consideration of the premises, and of the sum of One Dollar, to them in hand paid by said Des Moines & St. Louis Railroad Company, the receipt whereof is hereby acknowledged, the said Central Trust Company of New York and James Cheney, Trustees, have remised, released and quit-claimed, and by these presents they do remise, release and quit-claim unto the said Des Moines & St. Louis Railroad Company, its successors and assigns, all the right, title, interest, estate, claim and demand, which they, or either of them acquired, or now hold, in or to the said Des Moines & St. Louis Railroad, as the same is, hereinbefore described, by, through or under the aforesaid deed of trust or mortgage, to them executed, as aforesaid, by said Des Moines & St. Louis Railroad Company on or about said first day of December, A. D. 1881.

To Have and to Hold, The same unto said Des Moines & St. Louis Railroad Company, its successors and assigns forever.

In Testimony Whereof, Said Central Trust Company of New York, Trustee, has caused these presents to be signed by its Second Vice President, in its name and its corporate seal to be hereto attached; and the said James Cheney, Trustee, has also hereunto set his hand and seal the day and year first above written.

(Corporate Seal)

CENTRAL TRUST COMPANY OF
NEW YORK.

Attest:

N. O. Tinnefell, By E. Francis Hyde, Second Vice President.
(Seal) Secretary. JAMES CHENEY,

Trustee.

State of New York,
City and County of New York—ss.

On this Twenty-first day of February, 1899, before me personally came E. Francis Hyde, Second Vice President of the Central Trust Company of New York, to me personally known, who being by me duly sworn, did depose and say that he resided in the City of New York, that he was Second Vice President of the Central Trust Company of New York, the corporation described in and which executed the foregoing instrument by him as such officer thereof that he knew the corporate seal of said corporation, and that the seal affixed to said instrument was such corporate seal; that it was so affixed by authority of the Board of Trustees of said corporation, and that he subscribed his name thereto as Second Vice President thereof by the like authority. And the said E. Francis Hyde further acknowledged to me that he executed the foregoing instrument for and in behalf of and as the act and deed of, the said Central Trust Company of New York.

(Notarial Seal)

FRANK B. SMIDT,
Notary Public, N. Y. Co.

State of Indiana,
Allen County—ss.

Personally appeared before me a Notary Public in and for said County and State, James Cheney, Trustee, known to me as the party named as Trustee in the mortgage referred to in the above instrument and acknowledged the execution of the foregoing instrument for the purposes therein indicated on this 4th day of March.

(Notarial Seal)

FRED E. FOLLARS, 1899,
Notary.

My commission expires October 11, 1901.

FRED E. FOLLARS,
Notary Public.

Filed for Record April 11th, 1899 at 3:58 P. M.

JOHN P. COOK, Recorder,
By F. S. Russell, Dpty.

State of Iowa,
Polk County—ss.

I, Mrs. Frank W. Dodson, Recorder of said County, hereby certify that the foregoing writing is a copy from the original

record in my office, and of the whole thereof, and recorded in Book 390, page 85.

Dated at Des Moines, Iowa, in said County, this the second day of April, A. D. 1910.

MRS. FRANK W. DODSON,
Recorder.

Plaintiffs Exhibit No. 40.

Indenture of Lease.

Des Moines and St. Louis Railroad Company
To the
Wabash St. Louis and Pacific Railway Company.

This indenture made and entered into this first day of March in the year one thousand eight hundred and eighty two By and Between the Des Moines and St. Louis Railroad Company a corporation Organized and Existing under and by virtue of the laws of the State of Iowa, of the first part and the Wabash St. Louis and Pacific Railway Company a consolidated corporation of the States of Ohio Indiana Illinois and Missouri of the second part Witnesseth Whereas it has Been mutually agreed by and Between the said Des Moines and St. Louis Railroad Company the the subscribers to its Capital Stock and the Wabash St. Louis and Pacific Railway Company that Bonds of the last named company secured by its General Mortgage to the amount of fifteen thousand Dollars per mile of said Des Moines and St. Louis Railroad Company shall be executed and Delivered to the said Des Moines and St. Louis Railroad Company to be used in part payment for construction and Equipment and also that the Des Moines and St. Louis Railroad Company party of the first part shall Execute and Deliver to said Wabash St. Louis and Pacific Railway Company a lease in perpetuity of said Railroad and that said Wabash St. Louis and Pacific Railway Company shall thereafter operate said Railroad continuously under said Lease and upon the conditions and agreements to be covenanted therein providing for the Operation and Maintenance of said Railroad, the payment of all Taxes and assessments thereon, the protection by the said Wabash St. Louis and Pacific Railway Company of the interest on the Mortgage Bonds aforesaid and any further payment which due proportion of the earnings of said railroad may hereafter render Just the Bonds aforementioned to form the principle consideration of said lease and also that the General Mortgage Bonds of the Wabash St. Louis and

Pacific Railway Company aforesaid shall be secured by a first Mortgage upon the Railroad property of the said Des Moines and St. Louis Railroad Company to the extent of the par value of so many of said Bonds as shall be issued in part payment for construction and Equipment of the railroad of the last named company as aforesaid.

And Whereas the said Des Moines and St. Louis Railroad Company has obtained its right of way and is now completing its road

And Whereas The completing leasing and operating the said railroad is Deemed necessary to the Wabash St. Louis and Pacific Railway Company for the completion of a proper extension of its railway System

Now therefore in consideration of the premises and the sum of One Dollar to it in hand paid by the Wabash St. Louis and Pacific Railway Company Before the delivery of these presents the Des Moines and St. Louis Railroad Company hath this day leased and Demised and by these presents doth Lease and demise unto the said Wabash St. Louis and Pacific Railway Company from the date hereof in perpetuity all the right of way and railroad of the said first party extending from Des Moines in the State of Iowa to Albia in said State running through the counties of Polk Marion and Monroe in said State Together with all its real Estate embankments Bridges, Turn-outs side Tracks Building and Structures Water Tanks and fixtures Shops Engine and other houses Depots Turn Tables Engines cars machinery Tools and all its railroad property acquired and to be acquired and everything appurtenant to said railroad or used in connection therewith together with all rents issues and profits tolls and earnings credits and choses in action accruing to said first party from said Railroad as owner and holder thereof

To have and to hold the said property real and personal including the said Railroads appurtenances equipment franchises rights credits and choses in action and every interest herein Granted unto the said party of the second part its successors and assigns from the date hereof in perpetuity And the said party of the Second part in consideration of said leasing and of the other covenants herein contained to be performed by the party of the first part hereby agrees to and with the party of the first part that it will proceed with reasonable speed and Dilligence to complete and put in full operation the said line of Railroad from Des Moines to Albia that it will provide and place upon said line of railroad sufficient rolling Stock and

other Equipment to do all the Business of said railroad in a reasonable manner that it will complete said railroad with necessary Stations Depots and other Structures in such a manner that said Railroad will Become and remain a good Substantial and well Equiped railroad of the Class to which it Belongs

And the said party of the Second part further agrees that it will save and keep harmless the party of the first part against any claim or demand of the parties or persons by whom the moneys already expended on said railroad have been advanced.

And said party of the second part further agrees that it will pay all taxes and assessments that may be lawfully imposed on said Railroad and Property or any part thereof during the continuance of this lease that it will at all times keep said railroad in good condition and repair making all necessary renewals replacements and improvements and will perpetually use and operate said railroad in a skillful and effective manner.

And the said party of the Second part further agrees that it will and Truly pay or cause to be paid all sums of Principle and interest Specified in its aforesaid Bonds agreed to be Issued to the party of Second part to be used in part payment for construction and Equipment as aforesaid as they respectively mature and according to the terms and effects thereof and of the coupons thereto attached and will save and keep harmless said party of the first part as against all such Bonds and any Mortgage or Deed of Trust Given to Secure the same said Bonds Being secured by a Mortgage or Trust Deed executed by the party of the Second part on all its railroad property and franchises. Dated on the first day of June A. D. 1880 in which the Central Trust Company of New York and James Cheney of Indiana are Trustees reference being had to said mortgage or Deed of trust for a full description of the terms conditions rate of Interest and Times when the Principle and Interest of said Bonds shall mature and the said party of the second part further agrees that when out of the earnings rents issues tolls and profits arising from the use and operation of said railroad it shall have paid or provided the funds necessary to pay all the Principle and Interest mentioned in the aforesaid Bonds issued and sold for the purposes herein mentioned and shall have also paid all costs and expenses of repairing maintaining and operating said Railroad and making all necessary

and useful replacements and improvements thereof if a surplus shall still remain in any year or years arising from such earnings rents issues tolls or profits then at the end of each year during which such surplus shall be found to exist it will pay ten per cent of such surplus to the party of the first part for the Benefit of the Stock holders of said last named party.

And the party of the first part agrees that when the party of the second part shall have fully paid the principle and interest specified in the aforesaid bonds of the party of the second part to the extent and amount of the par value of so many of said bonds as are issued in part payment for construction and Equipment of the Railroad of the party of the first part as aforesaid then the aggregate of the sums so paid together with the obligation of the party of the second part to maintain and operate said Railroad perpetually in manner aforesaid shall subject to any limitation or qualification herein expressed constitute full payment and discharge of all rent under this case from thenceforth.

And the said part of the second part further agrees that a failure of the party of the second to keep and perform any of the matters and things to be by it kept and performed under the provisions hereof shall not work a forfeiture of this case but shall subject the party of the second part to any appropriate action for the loss and damage that may arise from such breach.

In Testimony Whereof the parties hereto have caused this instrument to be executed by their respective Presidents and to be attested by their respective corporate seals affixed thereto by their respective Secretaries this sixth day of March A. D. 1882.

DES MOINES AND ST. LOUIS RAILROAD
COMPANY.

By J. S. Clarkson, President.

Attest: F. M. Hubbell,
Secretary.

(Seal D. M. & ST. L. R. CO.)

(Seal) THE WABASH ST. LOUIS AND PACIFIC RAIL-
WAY COMPANY.

By A. L. Hopkins, 1 Vice President.

Attest: James F. How,
Secretary.

(Seal W. ST. L. & P. R. CO.)

State of Iowa,
County of Polk—ss.

Be it Remembered that on this Sixth day of March 1882 personally come before me the undersigned a Notary Public within and for the county aforesaid J. S. Clarkson who being by me duly sworn doth depose and says that he is the president of the Des Moines and St. Louis Railroad company lessor in the foregoing instrument that the name of said company is signed to said Instrument by him as President of said Company by virtue of the Order of the Board of Directors that the seal of the company attached thereto is the proper and Genuine seal of said company and is affixed thereto by Order of said Board of Directors. And the said J. S. Clarkson as President acknowledged the foregoing instrument to be the act and Deed of the Des Moines and St. Louis Railroad Company for the uses and purposes therein expressed.

In Witness Whereof I have hereunto set my hand and affixed my notarial Seal of Office this 6th day of March 1882.

(Notarial Seal)

FRANK H. PERRY,
Notary Public Polk Co. Iowa.

State of Iowa,
County of Polk—ss.

Be it Remembered that on this sixth day of March 1882 personally came before me the undersigned a Notary Public within and for the County aforesaid F. M. Hubbell who being by me duly sworn doth depose and say that he is the Secretary of the Des Moines and St. Louis Railroad Company lessor in the foregoing instrument that he countersigned the said Instrument and affixed the seal of said Company thereto by order of the Board of Directors thereof.

In Witness Whereof I have hereunto set my hand and affixed my notarial seal of office this 6th day of March 1882.

(Notarial Seal)

FRANK H. PERRY,
Notary Public Polk Co. Iowa.

State of Missouri,
City of St. Louis—ss.

Be it Remembered that on this 1st day of May 1882 personally came before me the undersigned a Notary Public within and for the County aforesaid A. L. Hopkins who

being by me duly sworn doth depose and say that he is the First Vice President of The Wabash St. Louis and Pacific Railway Company lessee in the foregoing instrument that the name of said Company is signed to said Instrument by him as President of said Company by virtue of the order of the Board or directors that the seal of the Company attached thereto is the proper and Genuine seal of said Company and is affixed thereto by order of said Board of Directors. And the A. L. Hopkins as first Vice President acknowledged the foregoing instrument to be the act and Deed of The Wabash St. Louis and Pacific Railway Company for the uses and purposes therein expressed.

In Witness Whereof I have hereunto set my hand and affixed my notarial seal of office this 1st day of May 1882, my commission expires June 29th, 1885.

(Notarial Seal)

GEO. S. GROVER,
Notary Public City of St. Louis,
State of Missouri.

State of Missouri,
City of St. Louis—ss.

Be it Remembered that on this 1st day of May 1882 personally came before me the undersigned a Notary Public within and for the County aforesaid, James F. How who being by me duly sworn doth depose and say that he is the Secretary of the Wabash St. Louis and Pacific Railway company lessee in the foregoing Instrument that he countersigned the said Instrument and affixed the seal of said company thereto by order of the Board of Directors thereof.

In Witness Whereof I have hereunto set my hand and affixed my notarial seal of office this 1st day of May 1882, my commission expires June 29th 1885.

(Notarial Seal)

GEO. S. GROVER,
Notary Public City of St. Louis,
State of Missouri.

Filed May 6th 1882 at 11:50 A. M.

J. J. PAYNE,
Recorder.

State of Iowa,
Polk County—ss.

I, Mrs. Frank W. Dodson, Recorder of said County, hereby certify that the foregoing writing is a copy from the original

record in my office, and of the whole thereof, and recorded in book 104, page 463.

Dated at Des Moines, Iowa, in said County, this the sixth day of April, A. D. 1910.

MRS. FRANK W. DODSON,
Recorder.

Piffs. Exhibit No. 41.

Consent of Des Moines & St. Louis Railroad Co. to Cancellation of Lease Made to Wabash, St. Louis and Pacific Ry. Co. March 1st, 1882.

Office of the Des Moines & St. Louis Railroad Co.
Des Moines, Iowa.

The following among other proceedings were had by the Board of Directors of the Des Moines & St. Louis Railroad Company at the office of the company in Des Moines, Iowa on the 3rd day of August 1886, to-wit:

"Wells H. Blodgett offered the following preamble and resolution and moved their adoption, to-wit:

Whereas on or about the first day of March, 1882, a certain contract in writing was entered into between the Des Moines & St. Louis Railroad Company of the first part and Wabash St. Louis and Pacific Railway Company of the second part, whereby this company, (the Des Moines & St. Louis Railroad Company) leased and demised unto said Wabash St. Louis & Pacific Railway Company in perpetuity, all its right of way and railroad extending from Des Moines in the State of Iowa to Albia in said State, running through the counties of Polk, Marion, and Monroe, in said state, together with all its real estate, embankments, bridges, turnouts, side tracks, buildings, and structures, water tanks, and fixtures, shops, engines and other houses, depots, turntables, engines, cars, machinery, tools, and all its railroad property acquired, and to be acquired and everything appurtenant to said railroad or used in connection therewith, together with all rents issues and profits, tolls and earnings, credits and choses in action accruing to this, the Des Moines & St. Louis Railroad Company, from said railroad as owner and lessor thereof; and

Whereas in consideration of the premises, the said Wabash St. Louis & Pacific Railway Company, in and by said con-

tract among other things agreed that it would provide and place upon said line of railroad, sufficient rolling stock and other equipment to do all the business of said railroad in a reasonable manner; that it would pay all taxes and assessments that might be lawfully imposed on said railroad and property or any part thereof during the continuance of said lease, that it the said lessee would at all times keep said railroad in good condition and repair, making all necessary renewals, replacements, and improvements; that it would perpetually use and operate said railroad in a skillful and effective manner, and that it would well and truly pay or cause to be paid the principal and interest of all the bonds secured by its general mortgage, that might be executed and delivered to this the Des Moines & St. Louis Railroad Company, to be used in part payment for construction and equipment, and

Whereas it was and is provided in said contract of lease that a failure of said Wabash St. Louis & Pacific Railway Company, to keep and perform the agreements, matters and things, to be kept and performed by it, should not work a forfeiture of said lease, but only subject said Wabash St. Louis & Pacific Railway Company to an action for such loss, or damage as might arise from such failure or breach, and

Whereas said Wabash St. Louis & Pacific Railway Company has become hopelessly insolvent, and has for a period for more than two years wholly failed to keep and perform all of the aforesaid covenants and agreements, to be kept and performed on its part, and

Whereas the leasehold interest of the Wabash St. Louis & Pacific Railway Company in said Des Moines & St. Louis Railroad, was offered for sale at public auction under a decree entered in the Circuit Court of the United States for the Eastern District of Missouri in a certain cause entitled, "The Central Trust Company of New York and others, against the Wabash St. Louis & Pacific Railway Company and others," and

Whereas at said sale there were no bidders for said interest, and for that reason the same was not sold; and

Whereas in a certain order or decree of said Court entered in said cause on or about June 15th, 1886, confirming the sale of the other railroads, and property therein described it was and is among other things provided, that before said sale of said other properties, shall stand as finally confirmed, the purchaser shall among other things procure the consent of

the Des Moines & St. Louis Railroad Company, to the surrender and cancelation of its aforesaid lease, to said Wabash St. Louis & Pacific Railway Company.

Now therefore in consideration of the premises and especially in consideration of the insolvency of said Wabash St. Louis & Pacific Railway Company, and the aforesaid order of said Court, be it

Resolved, That the Des Moines & St. Louis Railroad Company will, and it does hereby consent to the surrender and cancelation of the lease executed by it as aforesaid to said Wabash St. Louis & Pacific Railway Company on or about March 1st 1882.

Resolved that the President and Secretary, be and they are hereby authorized and instructed to cause a copy of the foregoing preamble, and resolution duly signed and certified under the seal of the corporation to be filed in said Circuit Court of the United States, for the Eastern District of Missouri in said cause, entitled, "The Central Trust Company of New York, and others against the Wabash St. Louis & Pacific Railway Company, and others."

Mr. How seconded the motion of Mr. Blodgett, and the motion being put by the President, all the members present to-wit: Messrs. Clarkson, Polk, Hubbell, How, and Blodgett voted in favor of the adoption of the preamble, and resolutions, and no votes were cast against them,"

State of Iowa,

Polk County—ss.

We, J. S. Clarkson President, and F. M. Hubbell, secretary of the Des Moines & St. Louis Railroad Company do hereby certify that the above and foregoing pages contain a full true and perfect copy of the preamble and resolutions offered at a meeting of the Board of Directors of said Railroad Company, held at the office of the company in Des Moines Iowa, August 3rd, 1886, with the action had thereon by the Board as the same now appears of record, in the "Minute Book" of said company now in possession of the Secretary of said company.

Witness our hands as President and Secretary of said company attested with the seal thereof this 4th day of August 1886.

(Seal)

J. S. CLARKSON, President.
F. M. HUBBELL, Secy.

Plffs. Exhibit No. 42.

Proceedings had at Stockholders Meeting Des Moines and St. Louis Railroad Co. authorizing Conveyance of the Railroad to Wabash Railroad Co.

Des Moines, Ia., Feb. 3rd, 1899.

The stockholders of the Des Moines and St. Louis Railroad Company, met this day pursuant to adjournment at the Secretary's office in Des Moines, Iowa.

There were represented, 20,000 shares of stock being all the shares of the corporation, as follows, viz:

The following shares were represented by A. B. Cummins by writing proxies, signed by the following stockholders, viz:

O. D. Ashley	1 share.
O. D. Ashley, Sec. Wabash Purchasing Com. 1999	1 shares.
Thomas H. Hubbard	1 share.
C. J. Lawrence	1 share.
Henry McHarg	1 share.
J. C. Otteson	1 share.
Edgar T. Welles	1 share.

The following shares were represented by B. C. Winston, by written proxies signed by the following stockholders, viz:

Joseph Ramsey, Jr.	1 share.
Wells H. Blodgett	1 share.
F. M. Hubbell, was represented by written proxy to	
H. D. Thompson	1 share.

To al.....20,000 shares.

The meeting having been called to order on motion, Mr. A. B. Cummins was elected chairman of the meeting and B. C. Winston, Sec. The minutes of the stockholders' meeting of January 25th, 1897, were read and approved.

On motion of Mr. H. D. Thompson the meeting proceeded to the election of a Board of Directors for the ensuing year, and upon the ballot being cast, it appeared that 20,000 shares of stock had been cast in favor of

Thomas H. Hubbard,
Edgar T. Welles,
O. D. Ashley,
J. C. Otteson,
C. J. Lawrence,
H. K. McHarg,
W. H. Blodgett,
Joseph Ramsey, Jr.,
F. M. Hubbell,

and they were declared unanimously elected directors for the ensuing year.

On a motion of Mr. B. C. Winston the following resolution was submitted to the meeting for its consideration, to-wit:

"Whereas the Wabash Railroad Company is the legal or equitable owner of all the capital stock of this corporation, and

Whereas, It is considered to be for the best interests of this Company and its stockholders that its road and property should be owned and controlled by said Wabashh Railroad Company a consolidated corporation, existing under the laws of the states of Missouri, Illinois, Indiana, Ohio and Michigan:

Now, Therefore, in consideration of the premises, it is by the stockholders of the Company:

Resolved: That the Board of Directors, and President and Secretary or other proper officers of this Company, be and they are hereby authorized and empowered to execute in the name and behalf of this Company, and under its corporate seal, a deed or deeds of conveyance for such consideration, and in such form as they may approve, or may be advised are appropriate and necessary to vest in and convey to said Wabash Railroad Company, all the railroad right of way, real estate, franchises and other property, real and personal, of every kind and wherever situated, that now does or may hereafter belong to the Des Moines and St. Louis Railroad Company, or in which it now has or may hereafter have any title, interest or estate."

Said resolution having been duly considered was on motion of Mr. Winston adopted by the stockholders represented by proxy voting unanimously in favor thereof.

There being no other business before the meeting, it adjourned, subject to the call of the President upon five days notice to each stockholder.

B. C. WINSTON,
Secretary.

Plffs. Exhibit No. 43.

Proceedings had at Meeting of Directors Des Moines and St. Louis Railroad Company authorizing Conveyance of the Railroad to Wabash Railroad Co.

Meeting
of the
Board of Directors.

New York, March 16, 1899.

A special meeting of the Directors of the Des Moines and St. Louis Railroad Company, was held this day at the office of the Wabash Railroad Company, No. 195 Broadway, New York, pursuant to call setting forth the object of the meeting.

Present: Messrs. O. D. Ashley, Edgar T. Welles, Cyrus J. Lawrence, Thomas H. Hubbard, and J. C. Otteson.

Upon motion, duly seconded, Resolved, that the present officers viz:

O. D. Ashley, President

F. M. Hubbell, Secretary;

J. C. Otteson, Assistant Secretary, and

F. L. O'Leary, Treasurer

be, and they hereby are, re-elected to the respective offices for the ensuing year and until their successors are chosen.

The minutes of the Directors meeting held February 7, 1897, were read and approved.

Upon Motion, duly seconded, Resolved, That the work "stockholders" in the first line of the resolution passed by the Board of Directors of the Des Moines and St. Louis Railroad Company on April 8, 1890, and the word "stockholders" in the eighth line of said resolution, recorded on page 151 of these Records, be stricken out and the word "Directors" be substituted therefor in each case.

Upon Motion, duly seconded, the following preamble and resolution were adopted:

Whereas, On or about the 8th day of April, 1890, the Board of Directors adopted resolutions authorizing the proper officers of the Company to convey all its railroad and property to the Wabash Purchasing Committee; and,

Whereas, No conveyance has ever been made to said Committee in pursuance of the authority in said resolution contained,

Now, Therefore, Resolved, That said resolution of April 8, 1890, be, and the same is hereby, for all purposes repealed and rescinded:

2nd. Resolved, That the President and Assistant Secretary be, and they are hereby authorized to execute in the name of the Company and under its corporate seal a deed conveying all the railroad, franchises, real estate, and other real and personal property of the Company, wheresoever situated to the Wabash Railroad Company. And such deed may be, in form, substantially as follows:

(Here follows Copy of Deed as Executed)

Adjourned on Motion.

J. C. OTTESON,
Assistant Secretary.

Plffs. Exhibit No. 44.

Deed of Des Moines and St. Louis Railroad Co. to Wabash
Railroad Co.

This Indenture made and entered into this first day of January, A. D. One thousand eight hundred and ninety-nine between The Des Moines & St. Louis Railroad Company, a corporation of the State of Iowa, of the first part, and The Wabash Railroad Company, a consolidated railway corporation, existing under the laws of the States of Missouri, Illinois, Indiana, Ohio and Michigan of the second part,

Witnesseth: That Whereas, the Des Moines & St. Louis Railroad Company owns a line of railroad in the State of Iowa extending from Des Moines in said State through the Counties of Polk, Marion and Monroe to the town or city of Albia in said Monroe County, where its said line of road connects with the tracks of the Wabash Railroad; and,

Whereas, The Wabash Railroad Company owns and operates a line of railroad extending from St. Louis in the State of Missouri by way of Moberly and Glenwood Junction in said state, to Moulton in the County of Appanoose in the State of Iowa, and from thence to Ottumwa in the state last aforesaid; and

Whereas, the Wabash Railroad Company is engaged in the construction of a line of railroad from Moulton aforesaid, to the town or city of Albia in said County of Monroe, where its said line connects with the road and tracks of what is known as the Des Moines & St. Louis Railroad; and

Whereas, the stockholders of the Des Moines & St. Louis Railroad Company have, by their unanimous vote, authorized and directed the proper officers of said company to sell, assign and set over unto said Wabash Railroad Company all its railroad, right of way, rolling stock, leasehold interests and other property.

Now Therefore, Know All Men By These Presents, that for and in consideration of the premises, and of the sum of One Dollar paid to the Des Moines & St. Louis Railroad Company, the receipt whereof is hereby acknowledged, the Des Moines & St. Louis Railroad Company has granted, bargained, sold, assigned and set over, and by these presents it does grant, bar-

gain, sell, assign and set over unto the Wabash Railroad Company, its successors and assigns forever, all of its said line of railroad and right of way as the same now is, or may be hereafter constructed, or acquired in said State of Iowa, commencing at a point in or near the City of Des Moines, where said road connects with the tracks of the Des Moines Union Railway Company, and extending from thence in a southeasterly direction through the Counties of Polk, Marion and Monroe to the town or city of Albia in Monroe County, a distance of about sixty-seven miles, together with all the real estate and embankments, bridges, turn-outs, side-tracks, yards, structures water tanks, shops, engine houses, depots turntables, engines, cars and other rolling stock, machinery, tools, lots, lands, buildings, offices, furniture and all its rights, privileges and franchises and all other things, real and personal, now owned, or used, or that may be hereafter owned or used by the party of the first part in connection with the line of railroad above described and herein and hereby granted, and especially including all the rights and leasehold and other interests of the first party under a contract dated May 10th, 1889, between the Des Moines Union Railway Company of the first part and the Des Moines and St. Louis Railroad Company, the Des Moines and Northwestern Railway Company, and the St. Louis, Des Moines and Northern Railway Company, of the second part.

To Have And To Hold all and singular the above granted and described property with all its appurtenances and the revenues, rents, issues and profits thereof, unto said Wabash Railroad Company, its successors and assigns, forever.

In Testimony Whereof the Des Moines & St. Louis Railroad Company has caused these presents to be signed in its name by its President and attested by its corporate seal the day and year first above written.

(Seal)

DES MOINES & ST. LOUIS RAILROAD
COMPANY.

By O. D. Ashley, President.

Attest:

J. C. Otteson,
Assistant Secretary.

State of New York,
County of New York—ss.

Be it remembered that on this 16th day of March A. D. 1899, before me, the undersigned, a Notary Public within and for the County and State of New York came O. D. Ashley, Presi-

dent of the Des Moines and St. Louis Railroad Company, who is personally known to me to be the identical person whose name is affixed to the within and foregoing instrument of writing as President of the said The Des Moines and St. Louis Railroad Company, and who acknowledged the same to be his voluntary act and deed as President of the said The Des Moines and St. Louis Railroad Company, party thereto; that the seal affixed to said instrument is the seal of said corporation; that said instrument was signed and sealed by him in behalf of said corporation by authority of its Board of Directors, and that he executed the same as its voluntary act and deed for the uses and purposes therein mentioned.

In Testimony Whereof, I have hereunto set my hand and affixed my official seal this 16th day of March A. D. 1899.

(Seal)

H. L. UTTER,
Notary Public, Kings County,
Certificate filed in New York,
County.

State of New York,
County of New York—ss.

I, William Sohmer, Clerk of the County of New York, and also Clerk of the Supreme Court for the said County, the same being a Court of Record, Do Hereby Certify, That H. L. Utter, has filed in the Clerk's Office of the County of New York, a certified copy of his appointment as Notary Public for the County of Kings with his autograph signature, and was at the time of taking the proof or acknowledgment of the annexed instrument, duly authorized to take the same. And further that I am well acquainted with the handwriting of such Notary, and verily believe the signature to the said certificate of proof or acknowledgment to be genuine.

In Testimony Whereof I have hereunto set my hand and affixed the seal of the said Court and County, the 18th day of March 1899.

(Seal)

WILLIAM SOHMER,
Clerk.

State of New York,
County of New York—ss.

Be it remembered that on this 18th day of March A. D. 1899, before me, the undersigned, a Notary Public within and for the County and State of New York came O. D. Ashley, President of the Des Moines and St. Louis Railroad Company, who is personally known to me to be the identical person whose

name is affixed to the within and foregoing instrument of writing as President of the said The Des Moines and St. Louis Railroad Company, and who acknowledged the same to be his voluntary act and deed as President of the said The Des Moines and St. Louis Railroad Company, party thereto; that the seal affixed to said instrument is the seal of said corporation; that said instrument was signed and sealed by him in behalf of said corporation by authority of its Board of Directors, and that he executed the same as its voluntary act and deed for the uses and purposes therein mentioned.

In Testimony Whereof, I have hereunto set my hand and affixed my official seal this 18th day of March A. D. 1899.

B. R. HIGGINS,
Notary Public,
Kings County.

State of New York,
County of New York—ss.

I, William Sohmer, Clerk of the County of New York, and also Clerk of the Supreme Court for the said County, the same being a Court of Record, Do Hereby Certify, That B. R. Higgins, whose name is subscribed to the Certificate of the proof or acknowledgment of the annexed instrument, and thereon written, was, at the time of taking such proof or acknowledgment, a Notary Public in and for the County of New York, dwelling in the said County, commissioned and sworn, and duly authorized to take the same. And further that I am well acquainted with the handwriting of such Notary, and verily believe that the signature to the said certificate of proof of acknowledgment is genuine.

In Testimony Whereof I have hereunto set my hand and affixed the seal of the said Court and County, the 18th day of March 1899.

(Seal)

WILLIAM SOHMER,
Clerk.

Piffs. Exhibit No. 45.

Deed of Wabash St. Louis & Pacific Ry. Co. to Wabash Purchasing Committee.

This Indenture, made this 25th day of April A. D. 1888, between the Wabash, St. Louis and Pacific Railway Company, party of the first part, and James F. Joy, Ossian D. Ashley, Edgar T. Welles and Thomas H. Hubbard, parties of the second part.

Witnesseth:

Whereas, on the first day of June 1880, the Wabash, St. Louis and Pacific Railway Company, by a certain indenture of mortgage or deed of trust, known as the General Mortgage, duly conveyed to the Central Trust Company of New York, and James Cheney, as Trustee, to secure the payment of an intended issue of bonds by said Railway Company named and described therein to the amount of fifty millions of dollars, the lines of railway and other property appurtenant thereto belonging to said Railway Company and hereinafter described and set forth; and

Whereas, subsequent to said first day of June, 1880, to-wit, on the first day of May, one thousand, eight hundred and eighty-three, the said Wabash, St. Louis and Pacific Railway Company entered into an agreement with the Mercantile Trust Company of New York, as party of the second part, and the St. Louis, Iron Mountain and Southern Railway Company as party of the third part, known as the collateral trust agreement; and in accordance with said agreement said first named Railway Company deposited with the said Mercantile Trust Company of New York, assignments, bills of sale and other evidences of title to certain described bonds, shares, real estate and other property particularly set forth in said agreement and also particularly described in the decrees and supplemental decrees hereinafter named, the same being to secure an intended issue by said Wabash, St. Louis & Pacific Railway Company of bonds to the amount of ten millions of dollars, known as collateral trust bonds; and

Whereas, subsequent to said first day of May, 1883, in an action duly pending in the Circuit Court of the United States for the Eastern District of Missouri, and ancillary actions thereto pending in the Circuit Courts of the United States for the Southern District of Illinois, for the District of Indiana, for the Northern District of Ohio, Western Division, for the Southern District of Iowa, Eastern Division, and for the Eastern District of Michigan, respectively, wherein the Central Trust Company of New York and James Cheney were complainants, and the Wabash, St. Louis and Pacific Railway Company, the Mercantile Trust Company of New York and others, were defendants, decrees and supplemental decrees of foreclosure and sale, of the property so as aforesaid conveyed to said Central Trust Company of New York and James Cheney, and also the property deposited with the Mercantile Trust Company of New York, were duly entered in said several Courts, as follows:

On the 6th day of January and 5th day of March 1886, in the United States Circuit Court for the Eastern District of Missouri; on the 8th day of January and 6th day of March 1886, in the United States Circuit Court for the Southern District of Illinois; on the 9th day of January and the 6th day of March, 1886, in the United States Circuit Court for the Southern District of Iowa, Eastern Division; on the 12th day of January and the 17th day of March, 1886, in the United States Circuit Court for the Northern District of Ohio, Western Division; and on the 12th day of January and the 8th day of March 1886, in the United States Circuit Court for the Eastern District of Michigan; and

Whereas, pursuant to said decrees and supplemental decrees one Edmund T. Allen, Commissioner to execute said decrees, did, in the City of St. Louis, State of Missouri, on the 26th day of April, 1886, duly offer for sale and did sell the property, franchises and appurtenances hereinafter described, to James F. Joy, Ossian D. Ashley, Thomas H. Hubbard and Edgar T. Welles, constituting a purchasing committee under an agreement bearing date July 15, 1885, made between the holders of all the collateral trust bonds and a majority of the holders of the General Mortgage bonds; and

Whereas, said several Circuit Courts of the United States did thereafter, on and subsequently to the 15th day of June, 1886, duly confirm the said sale and entered orders to that effect; and in conformity to said orders said Edmund T. Allen did, as Commissioner aforesaid, duly make, execute and deliver his deed to said purchasing committee; and

Whereas, the said decrees and supplemental decrees did further provide as follows, that upon the compliance by the purchaser at said sale with the conditions thereof, then the Commissioner should execute to such purchaser deeds of conveyance of the property sold by him under the decree, and thereupon the complainants herein, to-wit, the Central Trust Company of New York and James Cheney, as trustees of said General Mortgage, and also the Mercantile Trust Company, defendant herein, as trustee of the Collateral Trust Mortgage, and the mortgagor, the Wabash, St. Louis and Pacific Railway Company, shall severally and in due form convey to said purchasers all their interest as trustees and as mortgagor in and to the property sold by said Commissioner to said purchasers or any of them;

Whereas, the said Circuit Court of the United States did, on the 30th day of March, also enter an order in the said cause ordering the Mercantile Trust Company to deliver to the said Purchasing Committee all the securities in its possession and

which had been purchased by them under said foreclosure decree, all of said securities being included in said collateral trust mortgage and hereinafter described.

Now, Therefore, In consideration of the premises, and in conformity to the provisions of said decrees and supplemental decrees, and in further consideration of one dollar in hand paid, the receipt whereof is hereby acknowledged, the Wabash, St. Louis and Pacific Railway Company has granted, bargained, sold and conveyed, and does by these presents, grant, bargain, sell and convey unto James F. Joy, Ossian D. Ashley, Thomas H. Hubbard and Edgar T. Welles, the survivors or survivor of them, and their or his successors or assigns, as a purchasing committee under the aforesaid agreement of July 15, 1885, and in trust for the parties interested therein, all its right, title and interest as mortgagor in said general mortgage and collateral trust agreement in and to the following property, to-wit:

All the right of way and railroad of the said The Wabash, St. Louis and Pacific Railway Company extending from the City of Toledo, in the State of Ohio, through the State of Indiana, and thence into the State of Illinois to Meredosia, with branch to Naples and East Hannibal, and from Meredosia to Camp Point, in the State of Illinois, with branch from Clayton to the Mississippi River at Hamilton, and with branch from Decatur to East St. Louis; and also extending from St. Louis in the State of Missouri to Kansas City, Missouri, with the extension from Moberly, Missouri, to the State line of Iowa, and a branch from Salisbury, Missouri, to Glasgow, Missouri; that portion of the Clarinda and St. Louis Railway in the State of Missouri; the Peoria, Pekin and Jacksonville, Railroad, extending from Pekin, Illinois, to Jacksonville, Illinois; the Springfield and Northwestern Railroad extending from Springfield, Illinois, to Havana, Illinois; the Braidwood Branch extending from near Braidwood, Illinois, to the Chicago Branch of the Wabash Railroad; the Madison County Railroad, extending from Edwardsville, Illinois, to its junction with the Chicago and Alton Railroad; the Detroit, Butler and St. Louis Railway, extending from Butler, in the State of Indiana, to Detroit, in the State of Michigan; the Chicago and Paducah Railway, extending from Effingham and Altamont to Streator, in the State of Illinois; the Chicago and Strawn Railway, extending from Strawn to Chicago, in the State of Illinois; the Council Bluffs and St. Louis Railroad, extending from Pattonsburg, Missouri, to the Iowa State line; together with all the embankments, bridges, turnouts, side tracks, buildings and structures, water tanks and fixtures, shops, engine and other houses, depots, turntables, engines, cars, machinery, tools, ferry

and other boats, depot grounds, real estate pertaining thereto or belonging to said Company at any of the terminals thereof, franchises, rights, interests and property and every other thing appurtenant to said railroad or used in connection therewith, together with all rents, issues, profits, credits and choses in action accruing from said railroad and appurtenances not required to be used by the Receivers according to the terms of the decrees heretofore entered in this cause; and also the real estate taken in the name of James F. How, as trustee for said company, in Marion County, Iowa, in Chicago, Illinois, St. Joseph, Missouri, and St. Louis, Missouri; the right of use to the bridge over the Missouri River at Kansas City, Missouri; the right to use certain tracks and terminal facilities in Cook County, Illinois, and in Chicago, Illinois; the right to use certain tracks and terminal facilities owned by the Peoria and Pekin Union Railway Company in Illinois; the right to use certain tracks and depot facilities in the Union Depot in Kansas City, Missouri; the right to use certain tracks and depot facilities in the Union Depot at Hannibal, Missouri; the right to use certain tracks and depot facilities in the Union Depot at St. Joseph, Missouri; the right to use certain tracks and depot facilities in the Union Depot at Detroit, Michigan; the right to use certain tracks extending from Clayton to Quincy, Illinois, and certain depot and station houses in said last named city; and interest in the elevator company at Council Bluffs, Iowa; the right to use and buy 300 coal cars acquired from the National Rolling Stock Company, November 23, 1883; certain real estate with improvements thereon and terminal privileges in Burlington, Iowa, being lots 13, 13a, 14, 15, 15a, 16, 17, 18, 19, 20, 21, 22, 23, 24, in the original plat of the city of Burlington, Iowa; and also the leasehold interests of The Wabash, St. Louis and Pacific Railway Company in the following railways and properties, to-wit, Boone County and Boonville, Railway extending from Centralia to Columbia, in the State of Missouri; St. Louis, Ottumwa and Cedar Rapids Railway, extending from Coatesville, on the State line between Missouri and Iowa, to Ottumwa, in the State of Iowa; Brunswick and Chillicothe Railway, extending from Brunswick to Chillicothe, in the State of Missouri; St. Louis, Council Bluffs and Omaha Railway, extending from Chillicothe to Elm Flats, in the State of Missouri; Humeston and Shenandoah Railroad, extending from Humeston to Shenandoah in the State of Iowa; bridge over the Mississippi River at St. Louis, with tunnel and terminal rights in said city; bridge over the Mississippi River at Hannibal, Missouri; also all the property, rights, interests and choses in action acquired by said Wabash Railroad Company after June 1st, 1880, whether hereinbefore described or not, excepting the rail-

road and property of the Havana, Rantoul and Eastern Railroad Company; also certain lands and lots adjacent to the lines of railroad aforesaid in Missouri, Illinois, Ohio, Indiana, Iowa, and particularly described in the report of the Special Master, bearing date December 29, 1885, and filed in this cause, the title of which lands and lots has been acquired by the Receivers in said cause in the name of James F. How, trustee.

Also, all the following described property, the same being the property described in the collateral trust mortgage heretofore named, to-wit: 15 locomotives manufactured by the Rhode Island Locomotive Works; 13 passenger cars manufactured by Barney, Smith & Co., 5 baggage cars manufactured by Barney, Smith & Co., 1,210 freight cars manufactured by Barney, Smith & Co.; also all the right, title and interest of the Wabash, St. Louis and Pacific Railway Company in and to certain rolling stock mentioned and described in certain agreements between the Wabash, St. Louis and Pacific Railway Company and the New York and Pacific Car Trust Association; also steamers "Russell Sage," "John C. Gault," and "A. L. Hopkins;" also all the right, title and interest of the said Wabash, St. Louis & Pacific Railway Company in and to \$46,000 Union Bridge Company bonds; \$1,342,000 Humeston and Shenandoah Railroad Company first mortgage 7 per cent. bonds; \$1,000,000 Wabash, St. Louis and Pacific Railway Company general mortgage 6 per cent. bonds; \$400,000 Wabash Railway Company mortgage 7 per cent. bonds of 1879; \$199,000 Wabash, St. Louis and Pacific Railway Company—Detroit division—6 per cent. bonds; \$248,000 Quincy, Missouri and Pacific Railroad Company income bonds; \$1,711,000 Toledo Peoria and Western Railroad Company first preferred income bonds; \$728,000 Toledo, Peoria and Western Railroad Company second preferred income bonds; 13,404 shares Toledo, Peoria and Western Railroad Company; 10 shares St. Joseph Union Depot; 210 shares Union Depot Company of Kansas City, Missouri; 10 shares Hannibal Union Depot Company; 5,037 shares Des Moines Northwestern Railway Company; 2,214 shares Havana, Rantoul and Eastern Railroad Company; 9,996 shares Des Moines and St. Louis Railroad Company; 20,127 shares Humeston and Shenandoah Railroad Company; 21,534 96/100 shares Missouri, Iowa and Nebraska Railway Company; 9,000 shares St. Louis, Jerseyville and Springfield Railroad Company; 2,030 shares Clarinda and St. Louis Railroad Company; 14,246 shares Quincy, Missouri and Pacific Railroad Company; 5,380 shares St. Louis, Ottumwa and Cedar Rapids Railway Company; 11,089 shares Council Bluffs and St. Louis Railway Company; 7,281 shares St. Louis, Council Bluffs and Omaha Railroad Company; 4,332 shares Bruns-

wick and Chillicothe Railroad Company; 2,687 shares Center-ville, Moravia and Albia Railroad Company; 750 shares Attica, Covington and Southern Railway Company; 1,665 shares American Refrigerator Transit Company of Illinois; 60 shares Union Bridge Company of Toledo, Ohio; 17 shares St. Louis County Railroad Company; 4,994 shares Peoria and Pekin Union Railway Company; 9,999 shares Chicago and Western Indiana Railroad Company; 12,500 shares St. Louis Bridge Company, common stock; and 1,160 shares St. Louis and Mississippi Valley Transportation Company.

To Have And To Hold the same, with all the appurtenances and every part thereof, unto said James F. Joy, Ossian D. Ashley, Thomas H. Hubbard and Edgar T. Welles as a purchasing committee as aforesaid, their survivors or survivor and their or his successors or assigns. Subject, however, to all the terms and conditions of said orders of said several Courts confirming said sale, as aforesaid, and to all the terms, provisions, conditions, qualifications and restrictions of said decrees, in pursuance of which this deed is made as aforesaid.

In Witness Whereof, the said The Wabash St. Louis and Pacific Railway Company has caused these presents to be signed in its corporate name by its Vice President, and attested by its secretary, with the corporate seal of said company, as authorized and directed by its Board of Directors, the day and year above written.

**THE WABASH, ST. LOUIS AND PACIFIC
RAILWAY COMPANY,**

By A. L. Hopkins, Vice-President.

Attest:

W. M. Beach,
Assistant Secretary.

State of New York,
County of New York—ss.

On this 26th day of April, 1888, before me personally came Amos L. Hopkins, to me known to be the Vice President of The Wabash, St. Louis and Pacific Railway Company described in and which executed the foregoing instrument, who being by me duly sworn, says that he resides in the City of New York; that he is the Vice President of The Wabash, St. Louis and Pacific Railway Company; that he knows the corporate seal of said company; that the seal affixed to the foregoing instrument is such corporate seal of said company, and was so affixed by authority of the Board of Trustees of said company, and that he signed his name thereto by like authority as Vice President of said Company:

In Witness Whereof, I have hereunto signed my name, and affixed my notarial seal at the City, County and State of New York, this 26th day of April A. D. 1888.

WILLIAM J. HARDING,
Notary Public, Kings Co., New York.

Certificate filed in New York County.

Endorsements showing recording in various counties.

Plffs. Exhibit No. 46.

Deed of General Assignment from Wabash Purchasing Committee to The Wabash Railroad Co.

This Indenture made and entered into this 18th day of August A. D. 1898, Witnesseth:

That Whereas, O. D. Ashley, Thomas H. Hubbard of New York, and Edgar T. Welles of Hartford, Connecticut, (with James F. Joy of Detroit, now deceased) were constituted a Purchasing Committee under a certain agreement entered into by them with the General Mortgage and Collateral Trust Bondholders of the Wabash, St. Louis & Pacific Railway Company, dated July 15th, 1885, and also under a certain other agreement entered into by them November 21st, 1887, with Henry K. McHarg, John T. Terry, Cyrus J. Lawrence and T. B. Atkins (called therein the Bondholders Committee), the Central Trust Company of New York and the Wabash Western Railway Company, called therein the Railway Company; and

Whereas, By the terms of said agreements it became their duty to purchase and acquire, at certain mortgage foreclosure sales and otherwise, the railroads, property and assets of the Wabash, St. Louis & Pacific Railway Company; and

Whereas, In pursuance of said agreements the undersigned, together with James F. Joy, deceased, did as such committee, on or about the 26th day of April, 1886, under a decree of foreclosure entered in the Circuit Court of the United States for the Eastern District of Missouri, on or about the 6th day of January, 1886, in a certain cause, entitled "The Central Trust Company of New York and James Cheney, complainants, against the Wabash, St. Louis and Pacific Railway Company and others, defendants, consolidated cause," purchase certain lines of railroad, real-estate, and personal property, all of which are fully described in two certain deeds of conveyance, executed by Edmund T. Allen as Special Commissioner, to the undersigned and James F. Joy, deceased, as such committee, and to the survivor or survivors of them and their or his suc-

cessors or assigns, as trustees, under the aforesaid agreement of July 15th, 1885, both of which deeds bear date on or about October 15th, 1886, and to which deeds reference is hereby made for a full and accurate description of the property therein and thereby conveyed; and

Whereas, The Central Trust Company of New York and James Cheney of Indiana, trustees in a certain mortgage dated June, 1st, 1880, known as the 'General Mortgage' of the Wabash, St. Louis & Pacific Railway Company, did, by their deed dated on or about March 9th, 1888, convey to the undersigned, as such Purchasing Committee, or the survivor or survivors of them, and their or his successors or assigns, as a Purchasing Committee, all their right, title and interest, as such trustees, in the property in their said deed described, and to which deed reference is hereby made for a full and accurate description of the property therein and thereby conveyed; and

Whereas, The Wabash, St. Louis & Pacific Railway Company did, by its deed dated on or about the 25th day of April, 1888, convey to the undersigned, as such Purchasing Committee, the survivor or survivors of them, and their or his successors or assigns, all its right title and interest as mortgagor in the property described in its said General Mortgage, and in what was known as its 'Collateral Trust Mortgage,' and also all the property, rights, interests and choses in action, acquired by said Wabash, St. Louis, & Pacific Railway Company after June 1st, 1880, whether the same was or was not therein particularly described; and

Whereas, In pursuance of said agreements the undersigned, (together with James F. Joy, deceased) did, as such Committee, on or about the 15th day of May, 1889, under a decree of foreclosure, bearing date the 23rd. day of March, 1889, and duly entered on the first day of April 1889, in the Circuit Court of the United States for the Southern District of Illinois, in a certain cause therein pending, entitled "James R. Jesup and Edward H. Dixon against the Wabash, St. Louis & Pacific Railway Company, Solon Humphreys and Thomas E. Tutt, as receivers of said Wabash, St. Louis & Pacific Railway Company, Solon Humphreys, the Farmers Loan & Trust Company, Alexander M. White, Henry H. Warden, John T. Terry, Alfred T. White, James F. Joy, Ossian D. Ashley, Thomas H. Hubbard, Edgar T. Welles, The Central Trust Company of New York, as substituted trustees, The St. Louis, Iron Mountain & Southern Railway Company, The Missouri Pacific Railway Company, Daniel A. Lindley, The Central Trust Company of New York, James Cheney, Jay Gould, A. Lawrence Hopkins, S. Fisher Johnson, Edward Popper, T. Harson Purdy, Edwin

Parsons, Maximilian Herschel, The Mercantile Trust Company, John McNulta, as receiver of the property formerly of the Wabash, St. Louis & Pacific Railway Company, lying east of the Mississippi River, James Compton, The Metropolitan National Bank, David G. Ligget and John N. A. Griswold, defendants (consolidated cause)," purchase certain lines of railroad, real-estate and personal property, all of which are fully described in a certain deed of conveyance executed to the undersigned and James F. Joy, deceased, as such committee, by Bluford Wilson and Augustus J. Ricks, which deed bears date on the 27th day of June, 1889, and to which deed reference is hereby made for a full and accurate description of the property therein and thereby conveyed; and

Whereas, In pursuance of said agreements the undersigned, together with James F. Joy, deceased, did, as such committee, on or about the 11th day of March, 1889, under a decree of foreclosure entered in the Circuit Court of the United States for the Southern District of Illinois on the 2nd, day of February, 1889, in a certain cause therein pending, entitled "Henry F. Spaulding and John T. Terry, complainants, against James F. Joy, et al., defendants, "purchase certain lines of railroad, real-estate and personal property, all of which are fully described in a certain deed of conveyance executed to the undersigned and James F. Joy, deceased, as such committee, bearing date on or about the 14th day of May, 1889, and to which deed reference is hereby made for a particular description of the property therein and thereby conveyed; and

Whereas, The undersigned and James F. Joy, deceased, did on or about the 30th day of September, 1887, convey to the Wabash Western Railway Company (a corporation organized under the laws of Missouri) certain of the railroads, real estate and properties purchased by them, as aforesaid, to which deed reference is hereby made for a full and accurate description of property therein and thereby conveyed; and

Whereas, The undersigned and James F. Joy, deceased, did on or about the 24th day of July, 1889, convey to the Wabash Eastern Railway Company of Illinois, (a corporation organized under the laws of Illinois) certain other of the railroads, real estate and properties purchased by them as aforesaid, to which deed reference is hereby made for a particular description of the property therein and thereby conveyed; and

Whereas, The undersigned and James F. Joy, deceased did on or about the 24th day of July, 1889, convey to the Wabash Eastern Railway Company of Indiana, (a corporation of the State of Indiana) certain other of the railroads, real estate and properties, purchased by them as aforesaid, to which deed

reference is hereby made for a particular description of the property therein and thereby conveyed; and

Whereas, The undersigned and James F. Joy, deceased, did on or about the 24th day of July, 1889, convey to the Toledo Western Railroad Company, (a corporation organized under the laws of Ohio) certain other of the railroads, real estate and properties purchased by them as aforesaid, to which deed reference is hereby made for a particular description of the property therein and thereby conveyed; and

Whereas, The undersigned and James F. Joy, deceased, did on or about the 13th day of March, 1889, convey to the Detroit State Line Wabash Railroad Company, (a corporation under the laws of Michigan) certain other of the railroads, real estate and properties purchased by them as aforesaid, to which deed reference is hereby made for a particular description of the property therein and thereby conveyed; and

Whereas, The undersigned now have in their hands and standing in their names, as such Purchasing Committee, real estate, property and assets, all of which are fully described in the schedule hereto attached and made a part hereof, marked "Schedule A;" and

Whereas, It appears by said schedule and by the audited accounts of said Purchasing Committee, which have been stated and accepted and approved by said Wabash Railroad Company, that so much of said property and assets as are described in the Sixth Article of said Agreement of November 21st, 1887, did not exceed the requirements of the pledge as expressed in said Article:

Now Therefore, Know all Men by These Presents, That the undersigned O. D. Ashley, Thomas H. Hubbard, and Edgar T. Welles, the surviving members of said Purchasing Committee, have, in consideration of the premises and of the sum of One Dollar to them in hand paid by the Wabash Railroad Company, the receipt whereof is hereby acknowledged, and in further consideration of being indemnified by said Company against all claims that exist or may at any time be asserted, against said purchasing Committee or any member thereof, and of being discharged by said Wabash Railroad Company from the duties of their trust in respect to the property hereby conveyed, granted, bargained, sold, conveyed, assigned and set over, and by these presents they do grant, bargain, sell, convey, assign and set over unto the Wabash Railroad Company, its successors and assigns forever, all the real-estate, property and assets mentioned and described in said "Schedule A" and all the railroads, real-estate, property and assets that have come to them, or in which they acquired any right, title, interest, or estate

by, through or under any of the aforesaid purchases, deeds and conveyances to them made, as such Committee, now remaining in their hands or standing in their names, whether the same are or are not described in said "Schedule A."

It being the purpose and intention of the grantors and assignors herein to transfer to said Wabash Railroad Company, its successors and assigns, all the railroads, real estate, property and assets which have come to, or are vested in them, as such Purchasing Committee from any and all sources whatsoever, and which they, as such Committee, have not in the execution of their said trusts heretofore sold or assigned to other parties. It is understood, however, that the grantors herein do not, either personally, severally or as such Purchasing Committee, undertake to warrant or defend unto said Wabash Railroad Company, or its assigns, the title to any of the railroads, real estate, property or assets hereby conveyed, against the claims of any person or persons whomsoever, and it is hereby declared and understood that the only purpose of this conveyance is to vest in said Wabash Railroad Company the same title and estate in said property and assets that have come to and are vested in the undersigned as such Purchasing Committee under said agreements of July 15th, 1885, and November 21st, 1887.

And in consideration of said conveyance, and of the accounts stated with said Committee as aforesaid, the said Wabash Railroad Company has agreed and does hereby agree to assume and does assume, the payment of every debt, claim and liability of every kind whatsoever now existing, or that may hereafter be adjudged against said Committee or any member thereof, on account of any and every act, contract or thing done, made or suffered by them or either of them, as such Committee or as a member thereof, and said Company agrees to accept and does accept the said property subject to the trusts, if any, existing in respect to the same in the possession of said grantors, and does hereby indemnify and agree to indemnify, and hold harmless the said Committee and each member thereof, their and each of their heirs, executors, administrators and assigns from and against all and every claim, or claims, that may at any time exist or be asserted against them, or either of them, in connection with or on account of any of the matters hereinbefore mentioned, or in connection with or on account of this conveyance, and does hereby discharge said Committee and each member thereof from any further accounting in respect to any of said matters.

In Testimony Whereof, We have hereunto set our hands and seals the day and year first above written.

(Seal)

O. D. ASHLEY,

(Seal)

THOMAS H. HUBBARD,

(Seal)

EDGAR T. WELLES.

State of New York,

County of New York,

City of New York—ss.

I, Joseph B. Braman, a Commissioner for the State of Illinois, in and for the State of New York, resident in the City, County and State of New York, do hereby certify that Ossian D. Ashley, Thomas H. Hubbard and Edgar T. Welles, whose names are subscribed to the foregoing instrument appeared before me on the 17th day of August A. D. 1899, in person, and acknowledged that they signed, sealed and delivered the said instrument, as their free and voluntary act, for the uses and purposes therein set forth.

Given under my hand and official seal this 17, day of August A. D. 1899.

(Seal)

JOSEPH B. BRAMAN,

Commissioner for the State of Illinois, in and for the State of New York, resident in the City, County and State of New York, 120 Broadway, New York.

State of New York,

County of New York,

City of New York—ss.

On this 17, day of August, A. D. 1899, before me personally appeared Ossian D. Ashley, Thomas H. Hubbard and Edgar T. Welles, to me known to be the persons named in and who executed the foregoing instrument and acknowledged to me that they executed the same as their voluntary act and deed.

In Witness Whereof I have hereunto set my hand and affixed my official seal the day and year last above written.

(Seal)

JOSEPH B. BRAMAN,

Commissioner for the State of Iowa in and for the State of New York, resident in said City of New York Offices Equitable Bldg, 120 Broadway New York City., Branch & Residence 1274.

In pursuance of the terms of a resolution of its Board of Directors, adopted on or about August 16th, 1898, The Wabash Railroad Company, does, by its President and Secre-

tary, hereby execute the above and foregoing deed of conveyance in evidence of the acceptance thereof by said Company.

In Witness Whereof, Said President and Secretary have hereunto subscribed the name of said Wabash Railroad Company and affixed its corporate seal this 24th day of October, 1899.

THE WABASH RAILROAD COMPANY,

By O. D. Ashley,

President.

Attest:

J. C. Otteson,
Secretary.

State of New York,

County of New York,

City of New York—ss.

I, Joseph B. Braman, a commissioner for the State of Illinois, in and for the State of New York, and also a Commissioner for the State of Iowa, in and for the State of New York, resident in said City, County and State of New York, do hereby certify that O. D. Ashley the President of The Wabash Railroad Company and John C. Otteson, the Secretary thereof, personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such President and Secretary respectively, and to me such President and Secretary respectively appeared before me on the 24th day of October, A. D. 1899, in person, and acknowledged that they signed, sealed and delivered the said instrument as the free and voluntary act of the said corporation and as their own free and voluntary act as such President, and Secretary respectively, for the uses and purposes therein set forth.

Given under my hand and official seal this 24th day of October A. D. 1899.

(Seal)

JOSEPH B. BRAMAN,

Commissioner for the State of Illinois in and for the State of New York, resident in the City, County and State of New York.

(Seal)

JOSEPH B. BRAMAN,

Commissioner for the State of Iowa, in and for the State of New York, resident in the City, County and State of New York 120 Broadway, New York.

"Schedule 'A'".

List of Real estate and Personal Property now in the hands, or standing in the name of the Wabash Purchasing Committee.

Real Estate.

Lots in Burlington, Iowa, Des Moines County:

All of lots No. 13, 13a, 14, 15, 15a, 16, 17, 18, 19, 20, 21, 22, 23, and 24, in the City of Burlington, according to the original plat and survey of said City, subject to mortgage for \$56,000.00.

Real Estate in Pekin, Illinois, Tazewell County:

Lots 8 and 9, Block 41, and lot 9 in Block 40, in the City of Pekin, with all the side tracks and improvements situated thereon, and also, all side tracks lying west of the track formerly known as the "Main track" of the Peoria, Pekin & Jacksonville R. R. Co., and situated between Elizabeth Street and Susanah Street in said City of Pekin, County of Tazewell, and State of Illinois.

Real Estate in Quincy, Illinois, Adams County:

Blocks Nos. 4, 5 and 6 of Henry Von Phul's Subdivision of the fractional Section No. 10, and that part of the northwest quarter of fractional section 11, all in Township 2, South, Range 9 West of 4th P. M., which lies West of Front Street in the City of Quincy, Adams County, Illinois, as laid off by said Von Phul on September 10, 1852.

Also

A tract of land situated in the City of Quincy, County of Adams and State of Illinois and being a part of the south $\frac{1}{2}$ northwest $\frac{1}{4}$ section 35, Township 1 South, Range 9 West, more particularly described as follows: Beginning at a point 50 rods north of the southwest corner of the Northwest $\frac{1}{4}$ section 35, Town and Range aforesaid, thence running north along the west line of said quarter section 30 rods, thence east to the west line of Third Street in the City of Quincy, produced north, thence south along the west line of said Third Street produced, 30 rods, thence west to the place of beginning, containing about 10 acres more or less. Excepting out of the above described premises so much as has heretofore been conveyed to the Northern Cross Railroad for a right of way.

Real Estate in the City of Chicago.

All of lots 1, 2, 3, 4, 5 and 6, Block 9, in Springer & Fox's Addition to Chicago.

Also

All that part of lot 32 in the Assessors's Division of the N. W. $\frac{1}{4}$ and the W. $\frac{1}{2}$ of the N. E. $\frac{1}{4}$ of section 32 T. 39 N. R. 14 East of the 3rd P. M., lying east of the center of the South Branch of the Chicago River.

Also

All of lot or block 13, in the Assessors Division of N. W. $\frac{1}{4}$ and West $\frac{1}{2}$ of N. E. $\frac{1}{4}$ of Section 32, T. 39 N. R. 14 East of 3rd P. M.

In Brown's Addition to Chicago, situate in N. E. $\frac{1}{4}$ section 32, T. 39 R. 14 E. All of lots 8 41 and 42 in Block 3 of said Addition.

Lots 8, 9, 32, 39, 40, 41, 43, 44, 47, and 48 in Block 4 of said Addition.

Also

In Gallaghers Subdivision of S. $\frac{1}{2}$ Block 9, in Canal Trustees Subdivision of Section 33, T. 39 N. R. 14 East of 3rd P. M.

All lots 19, 20, 27 and 28 in Block 2 of said subdivision.

All of lots 23, 24, 31, and 32, in Block 1 of said subdivision.

Also

In T. J. Foster's Subdivision of part of block 10 in Canal Trustees Subdivision of section 33, T. 39 N. R. 14 East of 3rd P. M.

Lots 1 and 37 in Block 1.

Lots 1 and 37 in Block 2.

Also

In Gano Subdivision of part of Block 10, in Canal Trustees subdivision of section 33, T. 39 N. R. 14 East of 3rd P. M.

Lots 46, 47 and 48 of said Block 10.

Also

In Assessors Division of Block 11 of Canal Trustees Subdivision of section 33, T. 39 N. R. 14 East of 3rd P. M. Lots 61, 62, 99, and 100, of said Block 11.

Personal Property and Assets.

750 Shares of Stock of the Attica, Covington & Southern R. R., estimated value.....	\$143,800.00
995 Shares of Stock of the Champaign & South Eastern R. R. estimated value.....	\$116,600.00
Balance due on sale of Peoria & Pekin Union Rail-	

way Stock	\$100,000.00
Balance due on sale of the St. Louis, Jerseyville & Springfield, R. R. not considered available..	\$ 80,000.00
4,000 shares Lake Erie Transportation Co. Stock..	

Exhibit 47.

St. Louis Des Moines and Northern Railway Company
to
The Mercantile Trust Company.
Indenture of Mortgage.

This Indenture, made and entered into this first day of August A. D. 1881, by and between the Saint Louis, Des Moines and Northern Railway Company, party of the first part, and the Mercantile Trust Company, as Trustee, party of the second part,

Witnesseth:

Whereas, the Saint Louis, Des Moines and Northern Railway Company has been duly incorporated under the laws of the State of Iowa, by the adoption of articles of incorporation on the fourth day of April A. D. 1881, which articles have been duly recorded upon the records of Polk County, Iowa, and have also been duly filed for record in the office of the Secretary of State of the State of Iowa,

And Whereas, the Saint Louis, Des Moines and Northern Railway Company has undertaken the construction of a railroad from the City of Des Moines, in Polk County, Iowa, through the City of Boone, Iowa, to the northern line of said State, with such branches as from time to time may be determined upon, and is now engaged in the construction of a portion of said railroad, extending from the City of Des Moines through the Counties of Polk, Dallas, and Boone in said State, to the City of Boone, in the last named county, Iowa.

And, Whereas, for the purpose of aiding in such construction, the said Saint Louis, Des Moines and Northern Railway Company, propose to issue its bonds to the amount of eight thousand dollars per mile of its said road, all of which bonds shall be upon an equality with respect to the security for the payment thereof by these presents, notwithstanding the same be issued at different times, and each of which shall be authenticated by a certificate signed by the party of the second part. The said bonds shall be issued only upon the delivery to the party of the second part of a certificate or certificates sworn to by the President or the Chief Engineer of the party of the first part showing the number of miles of

railway completed and ready for operation. The said bonds and certificate and the interest coupons annexed to said bonds to be substantially in the following form, to-wit:

\$1,000.00

No.

United States of America

Saint Louis, Des Moines and Northern Railway
Company.

First Mortgage bond.

\$1,000.00

No.

Thirty years after date, for value received, the Saint Louis Des Moines and Northern Railway Company, a corporation of the State of Iowa, promise to pay, in gold coin of the United States of America, of or equal to the present standard of value to the holder of this bond, or in case this bond be registered, then to the registered owner thereof, at its financial agency in the City of New York, one thousand dollars, and also interest thereon at the rate of six per centum per annum, payable semi-annually in like gold coin, on the first days of February and August in each year, on the presentation and surrender of the respective interest coupons hereto annexed, at the financial agency aforesaid.

This bond is one of a series of bonds, each of the denomination of one thousand dollars, the payment of the principle and interest of which is secured by an indenture or mortgage of even date herewith, conveying to the trustee hereinafter named, in trust for the holders of said bonds, the entire railway, franchises, property and income of said company, and is a first lien thereon. The issue and certification of bond by the trustee is limited to \$8,000.00 per mile of completed road. If default shall be made in the payment of any semi-annual installments of interest on this bond or any bond of this series when the same shall become due and be demanded, and shall remain unpaid for six months after such demand, the principal of such bond shall become due and payable in the manner provided in the said mortgage. The said company and all of its property is liable to pay this bond, but stockholders of the company are not individually liable thereon or in respect thereto.

Said company hereby waives the benefit of any extension, stay or appraisal laws now existing or that may hereafter exist. This bond is to be valid only when authenticated by a certificate endorsed thereon, signed by the Mercantile Trust Company, trustee, to the effect that it is one of the bonds secured by the said mortgage and is issued in conformity with its provisions.

In Witness Whereof, the said company has caused its corporate name to be hereto signed by its President, and its corporate seal to be herunto affixed, attested by its secretary, and the annexed interest coupons to be executed with the engraved signature of its Treasurer, this, the first day of August, A. D. 1881.

SAINT LOUIS, DES MOINES AND NORTHERN RAILWAY COMPANY.

By President

Attest

..... Secretary.

Form of Coupons.

On the first day of A. D. 18.., The Saint Louis, Des Moines and Northern Railway Company will pay the bearer, at its financial agency, in the City of New York, thirty dollars, in gold coin of the United States, being interest for six months on Bond No.

..... Treasurer.

Form of Trustee's Certificate.

This is to certify that this bond is one of the series of bonds, of one thousand dollars each, secured by and mentioned in the mortgage within referred to, and is issued in conformity with its provisions.

THE MERCANTILE TRUST COMPANY,

Trustee.

By President.

Now, Therefore, the said Saint Louis, Des Moines and Northern Railway Company, to secure the payment of said bonds and interest to the extent only of so many of said bonds as may be actually issued in the manner hereinbefore provided by this indenture, doth grant, bargain, sell, convey and transfer unto the said The Mercantile Trust Company, as trustee, and to their successor in trust, except as hereinafter provided, all its railroad extending as aforesaid, from the western boundary line of the City of Des Moines, in Polk County, Iowa, by way of Clive in said County, through the counties of Polk, Dallas and Boone, in said State, to the City of Boone, in the last named county, but not including the branch or portion of railroad extending from said Clive to Waukee, in the county of Dallas, together with the real estate necessary for and used in the operation of said road, its right of way, embankments, bridges, turn-outs, side tracks, buildings and structures, water tanks and fixtures, shops, engine and other houses, depots, turn-tables, engines, cars, machinery, tools, and all its railroad

property acquired and to be acquired, and everything appurtenant thereto or used in connection therewith, together with all rents, issues, tolls, and earnings accruing to said party of the first part.

This Company having heretofore sold and conveyed to the Des Moines Northwestern Railway Company an undivided half of so much of its road, and property as lies between the City of Des Moines and the Town of Clive, the same is not intended to be included in or conveyed by this Mortgage.

To Have and to Hold the above granted and described property and appurtenances unto the party of the second part, its survivors and successors and assigns, upon the trusts, nevertheless, and for the purposes hereinafter expressed or indicated, namely.

First. In case the Saint Louis, Des Moines and Northern Railway Company shall fail to pay the said interest coupons subjoined to the bonds so executed by that company, or any or either of the said coupons, or any part of the same, at the time or times and in manner so as aforesaid provided for the payment thereof, and in case such default shall continue for the space of ninety days, the party of the second part or its successors may enter upon and take possession of all or any part of the above granted premises, and itself, and by its attorneys, agents and servants may take, hold, use and operate the same, making from time to time needful repairs and alterations, and may receive the tolls, rents, issues, profits and income derivable therefrom and after deducting and paying out of such gross receipts and income the expenses of operating and managing the premises and of such needfull repairs and alterations, and any taxes and other necessary and proper charges upon or pertaining to the premises, and executing the hereby created trust, the party of the second part and its successors in trust shall apply the surplus or net receipts and income so realized by it to the payment of the said interest coupons in the order in which the same shall have become or shall be due and payable.

Second. In case default shall so as aforesaid be made in the payment of the said interest coupons, or any or either thereof, and shall continue for the period of six month, then and in such case after entry as aforesaid, or without such entry, and upon the written request of the holders of at least one-half of the aggregate amount of the bonds so executed by the Saint Louis, Des Moines and Northern Railway Company and then outstanding and unpaid, the party of the second part and its successors in the trust may personally, or by its attorneys or agents, sell and dispose of all and singular the above granted

and described premises at public auction, in the City of Des Moines, having first given notice of the time and place of such sale by advertisement published in some newspaper of general circulation published in the City of New York, and also in one newspaper of general circulation published in the City of Des Moines, and also in one newspaper published in each other county in Iowa through or into which the said railroad extends, and which notice shall in each of said newspapers be so published at least once in each week for at least six weeks immediately preceding the sale.

And the party of the second, or its successors in the trust, may make, execute and deliver to the purchaser or purchasers at such sale a good and sufficient deed of the premises so sold to him or them, and the sale so made as aforesaid shall be a perpetual bar both in law and in equity against the party of the first part and all other persons lawfully claiming or to claim the said premises, or any part thereof, by, from, through, or under it. But if by it deemed expedient the party of the second part or its successors in the trust may cause such sale to be made through or under judicial proceedings of foreclosure and sale to be instituted by it or its successors.

Third. From the proceeds of any sale which may so as aforesaid be made, after deducting the proper costs and expenses thereof, and of the proceedings and all other expenses, advances or liabilities which shall have been duly incurred under these presents or the powers thereby created, or for taxes or other proper charges, and the reasonable compensation of the party of the second part or its successors in or for the execution of the hereby created trusts, the party of the second part or its successors shall apply the remainder of such proceeds to the payment of the principal of such of the said bonds executed by the Saint Louis, Des Moines and Northern Railway Company as having been duly certified and issued in the manner hereinbefore provided shall then be outstanding and unpaid, and of the interest which shall then have accrued upon such principal and shall be in arrear and unpaid. And if after so paying all sums payable for principle and accrued interest upon the said bonds a surplus shall remain, such surplus shall belong and be paid to the party of the first part, its successors or assigns. But if such proceeds shall not be sufficient for payment of all the said bonds in full, the same shall be applied ratably and without discrimination or preference upon or towards payment of the principle and interest of all the same, except that such payment of or upon interest coupons shall be in the order of date of their maturity.

Fourth. In case default shall be made in the payment of any of the interest coupons aforesaid, according to the tenor thereof, and such default shall continue for the space of six months, then and in such case, after the lapse of the said six months, the sums of principle secured by all the said bonds so executed by the party of the first part, with all accrued unpaid interest thereon shall, at the option of the party of the second part, or its successors, become (for all purposes of these presents) immediately due and payable, anything contained in the said bonds or in these presents notwithstanding. But a majority in interest of the holders of the said bonds may in writing (and for all purposes of these presents) revoke or annul the decision of or upon such option, and instruct the party of the second part or its successors, to declare such principle to be so due, or to waive that right: Provided, however, that nothing done or omitted in respect of such default shall prejudice the rights of the party of the second part or of its successors in respect of any subsequent default.

Fifth. Upon payment of the first part of all sums which shall become due for principle and interest under and by virtue of said bonds, and of all sums incurred or chargeable under and by virtue of these presents, then and thereupon all estate and power of the party of the second part and its successors under or by virtue of these presents shall cease.

Sixth. In case upon or by reason of any default as hereinbefore provided possession of the above granted and described premises shall be taken and no sale thereof shall have been had under the hereby created powers, such possession will be surrendered upon payment of all sums then due upon the said bonds and hereinbefore contemplated to be payable up to and at the time of such surrender, including in such payment the principle, if then due by the terms of the said bonds or by election as above provided. But the said surrender shall be of the premises as existing at the time thereof, and shall not prejudice or impair and estate and lein of these presents in respect of any sums secured by the said bonds and not theretofore paid or satisfied, nor affect or impair the rights of the party of second part and its successors in respect of any thereafter accruing default.

Seventh. It is understood and agreed that these presents shall be a security for the due payment of all sums which shall become due and payable under or by virtue of the said bonds, notwithstanding any laws of the State of Iowa now existing or to be hereafter to be enacted for the extention, stay of execution, valuation or appraisalment and without de-

lay or relief from or by reason thereof, and that all operation and benefit of such laws is hereby waived to the end that the same shall not be invoked or effective to restrict, postpone or impair the operation of these presents or the estate and power thereby created.

Eighth. It shall be the duty of the party of the second part and its successors to proceed in and with the execution of the several powers so vested in them in the manner and at the times or in the cases hereinbefore specified for the exercise thereof, provided that requisition in writing to so proceed shall be made upon them by or in behalf of the holders of at least one-half in amount of the said bonds then outstanding and unpaid, or of the holders of a less proportion of the said bonds in case and to the extent that compliance with such request of the minority shall (after reasonable notice to other parties in interest) appear to them to be clearly necessary for the protection of the trust estate or security of the said bonds.

Ninth. The said party of the second part or any successor to it in the trust hereby created may resign as Trustee under these presents by writing, taking effect thirty days after the delivery thereof to the said party of the first part; or, upon the payment of its reasonable charges for services rendered and money expended in the performance of its duties as Trustee up to that time, it may be removed and a successor or successors appointed by writing, signed by the holders of a majority of said bonds at the time outstanding.

The said Trustee shall receive a reasonable compensation for every act done by it as such Trustee under this indenture; and the said Trustee shall not be required to take any step in the execution of this trust likely to subject it to liability or expense, unless the holders of the bonds secured thereby or some of them, shall give sufficient security to indemnify the Trustee from such liability or expense.

And the said Trustee shall be at liberty to appoint counsel learned in the law in all suitable cases, whose reasonable fee shall be a proper charge upon the trust estate; and it is hereby further provided that the Trustee shall not be liable for any default or neglect of any co-trustee, or of any agent by it appointed, when such agent shall have been selected with reasonable discretion, and shall only be required to exercise good faith and ordinary diligence in the performance of thier duties under this indenture. It is agreed between the parties hereto, and made part of the contract with the holders of the bonds secured hereby, that the said Trust Company, the trustee herein, shall not be required to look beyond the certificate or certificates of the President or Chief Engineer, as the case may be, as herein provided, and shall not be respon-

sible in any event for any act done in pursuance of such certificate or certificates.

Tenth. The party of the first part, its successors and assigns, shall and will duly execute to the party of the second part and its successors and assigns such further deeds, conveyances and assurances in the law, for the better assuring to the party of the second part and its successors and assigns upon and for the trusts and purposes aforesaid, all and singular the premises above granted and described, or intended to be granted and included in the lein of these presents, as shall from time to time be reasonably required by it, the party of the second part and its successors.

Eleventh. In case, by reason of resignation or otherwise, during the existence of the trusts hereby created, there shall occur or be a vacancy in the office of the trustee hereinbefore named, the same may be filled by appointment, in writing, executed by the holders of at least one-half in amount of the said bonds which shall then be unpaid and outstanding. Nothing herein contained however shall be so constructed as to prohibit or prevent the due filling of such vacancy, by authority, by a court of competent jurisdiction, in a proceeding to which the then holders of the said bonds and the party of the first part are duly made parties, or of which they have had due or reasonable notice.

Twelfth. The party of the first part, by resolution of its Board of Directors, authorized or approved at a meeting of its stockholders, hath authorized these presents to be duly executed to the parties of the second part. But nothing therein contained is to be in anywise constructed as subjecting to personal liability, in the premises, the officers or stockholders of the party of the first part, or any or either of them or their or his personal or individual estate.

In Witness Whereof, the Saint Louis, Des Moines and Northern Railway Company, in pursuance of the resolution aforesaid, has caused these presents to be executed by its President and attested by its Secretary, and has caused its corporate seal to be hereunto affixed the day and year first aforesaid; and the Mercantile Trust Company has also executed the same, to evidence its acceptance of the trust hereby created, the day and year aforesaid.

(St. Louis D. M.)
(N. W. Railway)
(Co. Seal)

THE ST. LOUIS, DES MOINES
AND NORTHERN RAILWAY
COMPANY,

By J. S. Clarkson, President.

Attest: J. S. Polk, Secretary. (Seal)

THE MERCANTILE TRUST CO.,

Trustee.

(Seal)

Louis Fitzgerald, President.

(Mercantile Trust)

(Co. Seal)

Attest: H. C. Deming, Secretary.

State Iowa,

County Polk—ss.

Be it remembered that on this 9th day of February 1882, personally came before me, the undersigned, a Notary Public, within and for the county aforesaid, J. S. Clarkson, who, being by me duly sworn doth depose and say that he is the President of the St. Louis, Des Moines and Northern Railway Company grantor in the foregoing instrument; that the name of said company is signed to said instrument by him, as President of said company, by virtue of the order of the Board of Directors; that the seal of the company attached thereto is the proper and genuine seal of said company and is affixed thereto by order of said Board of Directors. And the said J. S. Clarkson as President, acknowledged the foregoing instrument to be the act and deed of the St. Louis Des Moines and Northern Railway Company for the uses and purposes therein expressed.

In Witness Whereof, I have hereunto set my hand and affixed my notarial seal of office this 9th day of February 1882.

(Notary seal)

FRANK H. PERRY,

Notary Public, Polk County, Iowa.

State of Iowa,

County of Polk—ss.

Be it remembered that on this 9th day of February 1882, personally came before me, the undersigned, a Notary Public within and for the county aforesaid, J. S. Polk, who being by me duly sworn, doth depose and say that he is the Secretary of the St. Louis Des Moines and Northern Railway Company, grantor in the foregoing instrument; that he countersigned the said instrument and affixed the seal of said company thereto by order of the Board of Directors thereof.

In Witness Whereof I have set my hand and affixed my notarial seal of office this 9th day of February 1882.

(Notary seal)

FRANK H. PERRY,

Notary Public, Polk County, Iowa.

Filed Mch. 8th, 1882, at 5" o'clock P. M.

J. J. PAYNE, Recorder.

State of Iowa,

Polk County—ss.

I, Mrs. Frank W. Dodson, Recorder of said County, hereby certify that the foregoing writing is a copy of the original record in my office, and the whole thereof, and recorded in Book 104 pages 336 to 345.

Dated at Des Moines, Iowa, in said County, this 10 day of December 1909.

MRS. FRANK W. DODSON, Recorder.

This Indenture, made and entered into this 2nd day of October 1889, by and between the St. Louis, Des Moines and Northern Railway Company, party of the first part, and the Mercantile Trust Company, party of the second part.

Witnesseth:

Whereas, the party of the first part did on the first day of February 1882, execute and deliver to the party of the second part a trust mortgage upon its property to secure certain bonds, and,

Whereas, there was omitted from the description of the property conveyed by said mortgage, a part of the road of the party of the first part which should have been included, and

Whereas, the Board of Directors of the party of the first part has this day authorized its president, and assistant Secretary to execute and deliver a supplement to said mortgage so that said omitted property shall be included in said mortgage.

Now therefore the St. Louis, Des Moines & Northern Railway Company, by this indenture doth grant, bargain, sell and convey unto the Mercantile Trust Company, as Trustee, and to its successor or successors in Trust, all that portion of its line of railroad lying between Farnham Street in the City of Des Moines, and the Western corporate limits of said City, being situated in the County of Polk and State of Iowa, together with all the appurtenances thereto belonging or therein included, and also all its interest of whatever kind in the obligation or stock of the Des Moines Union Railway Company, and all its property of whatever name or nature, not included and covered by said original mortgage.

This grant is intended to be supplemental to the said original mortgage so executed by the party of the first part to the party of the second part, which original mortgage was filed for record in the Recorder's office of Polk County, Iowa, on the eighth day of March 1882, and recorded in Book 104 of mortgage records at page 336, and this grant is made upon defeasances, conditions and provisions contained in said original mortgage and is to be taken and held as though the above description had been used therein.

In Witness Whereof, The St. Louis, Des Moines and Northern Railway Company in pursuance of the resolution aforesaid, has caused these presents to be executed by its President and attested by its Assistant Secretary, and has caused its corporate seal to be hereunto affixed this second day of October, 1889.

By G. M. DODGE, President.

F. M. HUBBELL, Assistant Secretary.

State of Iowa,

Polk County—ss.

Be it remembered that on this 2nd day of October, 1889, personally came before me, the undersigned, a Notary Public, within and for the County aforesaid, Grenville M. Dodge who being by me duly sworn, doth depose and say, that he is President of the St. Louis Des Moines & Northern Railway Company, grantor in the foregoing instrument; that the name of said company is signed to said instrument by him, as President of said Company, by virtue of the order of the Board of Directors; that the seal of the company attached thereto is the proper and genuine seal of said company, and is affixed thereto by order of said Board of Directors.

And the said Grenville M. Dodge, as President acknowledged the foregoing instrument to be the deed and act of the St. Louis, Des Moines & Northern Railway Company, for the uses and purposes therein expressed.

In Witness Whereof I have hereunto set my hand and affixed my notarial seal of office, this 2nd day of October, 1889.

JAMES P. HEWITT,

Notary Public Polk County, Iowa.

State of Iowa,

Polk County—ss.

Be it remembered that on this 2nd day of October, 1889, personally came before me, the undersigned, a Notary Public within and for the County aforesaid, F. M. Hubbell, who, being by me sworn, doth depose and say: That he is the Assist-

ant Secretary of the St. Louis Des Moines & Northern Railway Company, grantor in the foregoing instrument; that he countersigned the said instrument and affixed the seal of the said company thereto by order of the Board of Directors thereof.

In Witness Whereof, I have hereunto set my hand and affixed my notarial seal of office this 2nd day of October, 1889.

JAMES P. HEWITT,
Notary Public, Polk County, Iowa.

Endorsed: Filed Oct. 7, 1889. E. R. Mason, Clerk.

Exhibit 48.

In the Circuit Court of the United States, in and for the Southern District of Iowa, Central Division.

In Chancery.

To the Honorable, the Judges of the said Circuit Court of the United States, In Chancery Sitting.

The bill of complaint of the Mercantile Trust Company; a corporation organized and existing under the laws of the State of New York, against the St. Louis, Des Moines & Northern Railway Company; a corporation organized and existing under the laws of the State of Iowa.

And thereupon the complainant, the Mercantile Trust Company avers:

That it is a corporation organized under the laws of the State of New York, and is a citizen of said State; that the defendant the St. Louis Des Moines & Northern Railway Company is a corporation organized under the laws of the State of Iowa, for the purpose of constructing and operating a line of Railway, within said State, and is a citizen thereof.

That the amount in controversy in this suit exceeds two thousand dollars exclusive of costs.

That prior to the first day of February, 1882, the said St. Louis, Des Moines & Northern Railway Company, had been duly incorporated under the laws of the State of Iowa, for the purpose of constructing a railroad from the City of Des Moines in Polk County, Iowa, through the City of Boone, Iowa, to the northern line of said State. And that since the said first day of February, 1882, the defendant has constructed and is now the owner of a line of Railway extending from Farnham Street, in the City of Des Moines, through the counties of Polk, Dallas and Boone, to the City of Boone, aforesaid, together with all such right of way, all embankments, bridges, turn-outs, side

tracks, buildings and structures, water tanks, fixtures, shops, engines, depots, turn tables, engine houses, cars, machinery and tools, as are commonly appurtenant to railroad property.

Your orator further avers that on the first day of February, 1882, the said St. Louis, Des Moines & Northern Railway Company executed and delivered to this complainant, as Trustee, a certain indenture of mortgage, for the purpose of securing the payment of an issue of bonds to be executed and delivered by said Company to the extent of eight thousand dollars per mile of road, completed, and put in operation by said defendant; and for the purpose of showing the exact terms and provisions of said mortgage, a copy thereof is attached to this bill of complaint, and the original will be produced upon the hearing of this cause.

That in and by said mortgage the said defendant to secure the payment of the said bonds with interest as aforesaid, granted, bargained, sold, conveyed and transferred unto this complainant as Trustee, all its Railroad extending from the Western Boundary line of the City of Des Moines in said county of Polk, by way of Clive in said county, through the counties of Polk, Dallas & Boone, in said State, to the City of Boone in said County of Boone, together with the real estate necessary for, and used in the operation of said road, its right of way, embankments, bridges, turn outs, side tracks, buildings and structures, water tanks and fixtures, shops, engine and other houses, depots, turn tables, engines, cars, machinery, tools, and all its railroad property acquired or to be acquired and everything pertinent thereto or used in connection therewith, together with all issues, tolls, and earnings accruing to said party of the first part.

It being expressly stated that said conveyance of mortgage did not include the branch or portion of railroad, extending from Clive to Waukee in the County of Dallas, and it was further expressly stated, that the said St. Louis & Northern Railway Company, had theretofore sold and conveyed to the Des Moines Northwestern railway Company an undivided half of so much of its right of way, franchises and property as lie between the City of Des Moines and the town of Clive. The said one half interest so sold and conveyed was not included in or transferred by the said mortgage, and your orator further avers that said mortgage was duly recorded in the office of the recorders of the counties of Polk, Dallas and Boone, on or about the 8th day of March, 1882, and your orator further avers that in pursuance of and in performance of the provisions of said mortgage, and as described therein the said St. Louis, Des Moines & Northern Railway Company, for the purposes named in said mortgage issued and delivered to the

565

purchasers thereof, its mortgage bonds in sums of one thousand dollars each, to the extent of eight thousand dollars per mile of completed road, which bonds were duly certified by this complainant in accordance with the provisions of said mortgage. That the aggregate amount of bonds so issued and now outstanding is \$303,000.00. Three hundred & three thousand dollars all of which constitute valid obligations of the said defendant and none of which have been paid. That all of said bonds were issued and begun to bear interest prior to the first day of January, 1883, and that the interest thereon at the rate of six per cent per annum was evidenced by coupons attached thereto, which coupons matured on the first days of February and August in each year.

And your orator further avers that the said defendant has never paid or caused to be paid any of said bonds or any part or any one of the interest coupons so maturing as aforesaid, and that all of said coupons, which have matured semiannually since the first day of August 1882, remain wholly due and unpaid; and your orator further avers that it was provided in and by said mortgage that if default should be made in the payment of any of the interest coupons attached to said bonds as aforesaid, and such default should continue for the space of six months, then and in such case after the lapse of the said six months the sums of principal secured by all of said bonds so executed by the party of the first part, with all accrued unpaid interest thereon, should at the option of the party of the second part or its successors become, for all the purposes of said mortgage, immediately due and payable, anything contained in the said bonds or in the said mortgage notwithstanding.

And your orator further avers that it has exercised and now exercises its option and declares each and all bonds so secured by the said mortgage to be due and payable, and that it has given notice of such option to the defendant.

Your orator further shows that by inadvertence certain property of the defendant was omitted from the description in said mortgage heretofore referred to, and that for the purpose of supplying said omission, the defendant did on the 2nd day of October, 1889, execute and deliver to this complainant a supplemental mortgage for the purpose of better securing the said bonds so issued and described in said original mortgage. That in and by said supplemental mortgage the said Railway Company did grant, bargain, sell and convey unto this complainant as Trustee all that portion of defendant's line of railroad, being a one half interest lying between Farnham street in the City of Des Moines, and the

western corporate limits of said city, and being situated in the County of Polk and State of Iowa together with all the appurtenances thereto belonging or therein included, and also all its interests of whatever kind in the obligations or stock of the Des Moines Union Railway Company, and all its property of whatever name or nature not included and covered by said original mortgage. Said supplemental grant and conveyance being made upon the defeasance, conditions and provisions contained in said original mortgage; it being expressly stated therein that it was to be held as though the description last above given had been used in said original mortgage. And your orator for the purpose of better showing the contents thereof, attaches to this its bill, a copy of said supplemental mortgage, and will upon the hearing hereof produce the original.

And for as much as your orator is remediless according to the strict terms of the common law it prays your honors to take cognizance of this its suit in equity, and that the defendant may be required to answer this bill of complaint (but not under oath, an answer under oath being hereby expressly waived).

And it further prays that the said mortgage and supplemental mortgage herein referred to and described, be foreclosed, and the equity of redemption in the property therein conveyed, be forever barred and cut off. That an account may be taken and the amount due upon said bonds so issued and secured be ascertained, and that all the property described in said mortgage and supplemental mortgage, or so much thereof as may be necessary, may be sold under the order and direction of this court to satisfy whatever amount may be found to be so due from the defendant upon said bonds and interest coupons. And at such sale, the person making the same under the direction of the Court, may be authorized to receive in payment therefore or to such extent as they may be offered the said bonds and interest coupons, being surrendered and cancelled when accepted as a part of such purchase price. And that if it shall be found after making the sale as aforesaid that any sum remains due and owing from the defendant upon said bonds and interest coupons that the complainant may have judgment therefor for the use and benefit of the holders and owners of said bonds. And that a due and proper conveyance to the purchaser of said property so sold may be made, vesting and conveying, good, complete and absolute title to the same and to every part thereof.

And your orator further prays for the writ of subpoena issued out of and under the seal of this honorable Court, direct-

ed to the defendant, commanding it to appear at a time and under a penalty to be therein named and answer this bill of complaint. To stand by, abide and perform all the orders of the court herein, and your orator further prays for such and other and further relief as to equity and good conscience may seem meet.

(sgd) THE MERCANTILE TRUST CO.

(sgd) A. B. Cummins,
Of Counsel.

By Cummins & Wright,
Its Solicitors.

United States of America,
Southern District of Iowa,
Central Division,
Polk County—*ss.*

A. B. Cummins, being first duly sworn, upon his oath says: that he is one of the solicitors for the complainant in the above entitled cause; that he has investigated the matters and things set forth in the above bill, and has knowledge thereof; that the said bill is true of his own knowledge with the exception of those allegations therein stated upon information and belief and as to such allegations he believes them to be true.

(sgd) A. B. CUMMINS.

Subscribed and sworn to before me this 5th day of October
1889.

(Seal)

(sgd) JAS. P. HEWITT,
Notary Public Polk, County,
Iowa.

This Indenture made and entered into this first day of August A. D. 1881, by and between the Saint Louis, Des Moines & Northern Railway Company, party of the first part, and The Mercantile Trust Company, as Trustee, party of the second part.

Witnesseth:

Whereas, the Saint Louis, Des Moines and Northern Railway Company has been duly incorporated under the laws of the State of Iowa, by the adoption of articles of incorporation on the fourth day of April A. D. 1881, which articles have been duly recorded upon the records of Polk County, Iowa, and have also been duly filed for record in the office of the Secretary of the State of Iowa,

And, Whereas, the Saint Louis, Des Moines and Northern Railway Company has undertaken the construction of a railroad from the City of Des Moines in Polk County, Iowa,

through the City of Boone, Iowa, to the northern line of said State, with such branches as from time to time may be determined upon, and is now engaged in the construction of a portion of said railroad, extending from the City of Des Moines through the Counties of Polk, Dallas and Boone, in said State, to the City of Boone, in the last named county, Iowa.

And Whereas, for the purpose of aiding in such construction, the said Saint Louis, Des Moines and Northern Railway Company, proposes to issue its bonds to the amount of eight thousand dollars per mile of its said road, all of which bonds shall be upon an equality with respect to the security for the payment thereof by these presents, notwithstanding the same be issued at different times, and each of which shall be authenticated by a certificate signed by the party of the first part. The said bonds shall be issued only upon the delivery to the party of the second part of a certificate or certificates sworn to by the President or Chief Engineer of the party of the first part showing the number of miles of railway completed and ready for operation. The said bonds and certificate and the interest coupons annexed to said bonds to be substantially in the following form, to-wit:

\$1,000.00

No.

\$1,000.00

No.

United States of America

Saint Louis, Des Moines and Northern Railway
Company.

First Mortgage Bond.

Thirty years after date, for value received, the Saint Louis, Des Moines and Northern Railway Company, a corporation of the State of Iowa, promises to pay, in gold coin of the United States of America, of or equal to the present standard of value, to the holder of this bond, or in case his bond be registered, then to the registered owner thereof, at its financial agency in the City of New York, one thousand dollars, and also interest thereon at the rate of six per centum per annum, payable semi-annually in like gold coin, on the first days of February and August in each year, on the presentation and surrender of the respective interest coupons hereto annexed, at the financial agency aforesaid.

This bond is one of a series of bonds, each of the denomination of one thousand dollars, the payment of the principal and interest of which is secured by an indenture of mortgage of even date herewith, conveying to the trustee hereinafter named, in trust for the holders of said bonds, the entire railway, franchises, property and income of said company, and is

a first lien thereon. The issue and certification of bonds by the trustee is limited to \$8,000.00 per mile of completed road. If default shall be made in the payment of any semi-annual installment of interest on this bond or any bond of this series when the same shall become due and be demanded, and shall remain unpaid for six months after such demand, the principal of such bond shall become due and payable in the manner provided in the said mortgage. The said company and all of its property is liable to pay this bond, but stockholders of the company are not individually liable thereon or in respect thereto.

Said company hereby waives the benefit of any extension, stay or appraisement laws now existing or that may hereafter exist. This bond is to be valid only when authenticated by a certificate endorsed thereon, signed by the Mercantile Trust Company, trustee, to the effect that it is one of the bonds secured by the said mortgage, and is issued in conformity with its provisions.

In Witness Whereof, the said company has caused its corporate name to be hereto signed by its President, and its corporate seal to be hereunto affixed, attested by its Secretary, and the annexed interest coupons to be executed with the engraved signature of its Treasurer, this, the day of August A. D. 1881.

SAINT LOUIS, DES MOINES AND NORTHERN RAILWAY COMPANY,

By President.

Attest: Secretary.

Form of Coupon.

On the first day of A. D. 18.. The Saint Louis, Des Moines and Northern Railway Company will pay the bearer, at its financial agency in the city of New York, thirty dollars, in gold coin of the United States, being interest for six months on Bond No.

..... Treasurer.

Form of Certificate.

This is to certify, that this bond is one of the series of bonds, of one thousand dollars each, secured by and mentioned in the mortgage within referred to, and is issued in conformity with its provisions.

THE MERCANTILE TRUST COMPANY,

By Trustee.
..... President.

Now, Therefore, the Saint Louis, Des Moines and Northern Railway Company, to secure the payment of said bonds and interest to the extent only of so many of said bonds as may be actually issued in the manner hereinbefore provided by this indenture, doth grant, bargain, sell, convey, and transfer unto the said The Mercantile Trust Company, as trustee, and to their successors in trust, except as hereinafter provided, all its railroad extending as aforesaid, from the western boundary line of the City of Des Moines, in Polk County, Iowa, by way of Clive in said county, through the Counties of Polk, Dallas and Boone, in said State, to the City of Boone, in the last named County, but not including the branch or portion of railroad extending from said Clive to Waukee, in the County of Dallas, together with the real estate necessary for and used in the operation of said road, its right of way, embankments, bridges, turn-outs, side tracks, buildings and structures, water tanks and fixtures, shops, engine and other houses, depots, turn tables, engines, cars, machinery, tools, and all its railroad property acquired and to be acquired, and everything appurtenant thereto or used in connection therewith, together with all rents, issues, tolls, and earnings accruing to said party of the first part.

This Company having heretofore sold and conveyed to the Des Moines Northwestern Railway Company an undivided half of as much of its road, franchises and property as lies between the City of Des Moines and the Town of Clive, the same is not intended to be conveyed by this Mortgage.

To have and to hold the above granted and described property and appurtenances unto the party of the second part, its survivors and successors and assigns, upon the trusts, nevertheless, and for the purposes hereinafter expressed or indicated, namely.

First. In case the Saint Louis, Des Moines and Northern Railway Company shall fail to pay the said interest coupons subjoined to the bonds so executed by that company, or any or either of the said coupons, or any part of the same, at the time or times and in the manner so as aforesaid provided for the payment thereof, and in case such default shall continue for the space of ninety days, the party of the second part or its successor may enter upon and take possession of all or any part of the above granted premises, and itself, and by its attorneys, agents and servants, may take, hold, use and operate the same, making from time to time needful repairs and alterations, and may receive the tolls, rents, issues, profits and income derivable therefrom, and after deducting and paying out of such gross receipts and income the expenses of

operating and managing the premises and of such needful repairs and alterations and any taxes and other necessary and proper charges upon or pertaining to the premises, and executing the hereby created trust, the party of the second part and its successor in trust shall apply the surplus or net receipts and income so realized by it to the payment of the said interest coupons in the order in which the same shall have become or shall become due and payable.

Second. In case default shall so as aforesaid be made in the payment of the said interest coupons, or any or either thereof, and shall continue for the period of six months, then and in such case after entry as aforesaid, or without such entry, and upon the written request of the holders of at least one-half of the aggregate amount of the bonds so executed by the Saint Louis Des Moines and Northern Railway Company and then outstanding and unpaid, the party of the second part and its successors in the trust, may personally, or by its attorneys or agents, sell and dispose of all and singular the above granted and described premises at public auction, in the City of Des Moines, having first given notice of the time and place of such sale by advertisement published in some newspaper of general circulation published in City of New York, and also in one newspaper of general circulation published in the City of Des Moines, and also in one newspaper published in each other county in Iowa through or into which the said railroad extends, and which notice shall in each of said newspapers be so published at least once in each week for at least six weeks immediately preceeding the sale.

And the party of the second part, or its successors in trust, may make, execute and deliver to the purchasers at such sale a good and sufficient deed of the premises so sold to him or them, and the sale so made aforesaid shall be perpetual bar both in law and in equity against the party of the first part and all other persons lawfully claiming or to claim the said premises, or any part thereof, by, from, through or under it. But if by it deemed expedient the party of the second part or its successors in the trust may cause such sale to be made through or under judicial proceedings of foreclosure and sale to be instituted by it or its successors.

Third. From the proceeds of any sale which may so as aforesaid be made, after deducting the proper costs and expenses thereof, and of the proceedings and all other expenses, advances or liabilities which shall have been duly incurred under these presents or the powers thereby credited, or for taxes or other proper charges, and the reasonable compensation of the party of the second part or its successors shall apply the remainder of such proceeds to the payment of the principal

of such of the said bonds executed by the Saint Louis, Des Moines and Northern Railway Company as having been duly certified and issued in the manner hereinbefore provided shall then be outstanding and unpaid, and of the interest which shall then have accrued upon such principal and shall be in arrear and unpaid. And if after so paying all sums payable for principal and accrued interest upon the said bonds a surplus shall remain, such surplus shall belong and be paid to the party of the first part, its successors or assigns. But if such proceeds shall not be sufficient for payment of all the said bonds in full, the same shall be applied ratably and without discrimination or preference upon or towards the payment of the principal and interest of all the same, except that such payment of or upon interest coupons shall be in the order of date of their maturity.

Fourth. In case default shall be made in the payment of any of the interest coupons aforesaid, according to the tenor thereof, and such default shall continue for the space of six months, then, and in such case, after the lapse of the said six months, the sums of principal secured by all the said bonds so executed by the party of the first part, with all accrued unpaid interest thereon shall, at the option of the party of the second part, or its successors, become (for all purposes of these presents) immediately due and payable, anything contained in the said bonds or in these presents notwithstanding. But a majority in interest of the holders of the said bonds may in writing (and for all purposes of these presents) revoke or annul the decision of or upon such option, and instruct the party of the second part or its successors to declare such principal to be so due, or to waive that right; Provided, however, that nothing done or omitted in respect of such default shall prejudice the rights of the party of the second part or of its successors in respect of any subsequent default.

Fifth. Upon payment by party of the first part of all sums which shall become due for principal and interest under the by virtue of said bonds, and of all sums incurred or chargeable under and by virtue of these presents, then and thereupon all estate and power of the party of the second part and its successors under or by virtue of these presents shall cease.

Sixth. In case upon or by reason of any default as hereinbefore provided possession of the above granted and described premises shall be taken and no sale thereof shall have been had under the hereby created powers, such possession will be surrendered upon payment of all sums then due upon the said bonds and hereinbefore contemplated to be payable up to and at the time of such surrender, including in such payment the

principal if then due by the terms of the said bonds or by the election as above provided. But the said surrender shall be of the premises as existing at the time thereof, and shall not prejudice or impair the estate and lien of these presents in respect of any sums secured by the said bonds and not theretofore paid or satisfied, nor affect or impair the rights of the party of the second part and its successors in respect of any thereafter accruing default.

Seventh. It is understood and agreed that these presents shall be a security for the due payment of all sums which shall become due and payable under or by virtue of the said bonds, notwithstanding any laws of the State of Iowa now existing or hereafter to be enacted for the extension, stay of execution, valuation or appraisal and without delay or relief from or by reason thereof, and that all operation and benefit of such laws is hereby waived to the end that the same shall not be invoked or effective to restrict, postpone or impair the operation of these presents or the estate and power thereby created.

Eighth. It shall be the duty of the party of the Second Part and its successors to proceed in and with the execution of the several powers so vested in them in the manner and at the times or in the cases hereinbefore specified for the exercise thereof, provided that requisition in writing to so proceed shall be made upon them by or in behalf of the holders of at least one-half in amount of the said bonds then outstanding and unpaid, or of the holders of a less proportion of the said bonds in case and to the extent that compliance with such request of the minority shall (after reasonable notice to other parties in interest) appear to them to be clearly necessary for the protection of the trust estate or security of the said bonds.

Ninth. The said party of the second part of any successor to it in the trust hereby created may resign as Trustee under these presents by writing, taking effect thirty days after the delivery thereof to the said party of the first part; or, upon the payment of its reasonable charges for services rendered and money expended in the performance of its duties as Trustee up to that time, it may be removed and a successor or successors appointed by writing, signed by the holders of a majority of said bonds at the time outstanding.

The said Trustee shall receive a reasonable compensation for every act done by it as such Trustee under this indenture; and the said Trustee shall not be required to take any step in the execution of this trust likely to subject it to liability or expense, unless the holders of the bonds secured thereby, or

some of them, shall give sufficient security to indemnify the Trustee from such liability or expense.

And the said Trustee shall be at liberty to appoint counsel learned in the law in all suitable cases, whose reasonable fee shall be a proper charge upon the trust estate; and it is hereby further provided that the Trustee shall not be liable for any default or neglect of any co-trustee, or of any agent by it appointed, when such agent shall have been selected with reasonable discretion, and shall only be required to exercise good faith and ordinary diligence in the performance of their duties under this indenture. It is agreed between the parties hereto, and made part of the contract with the holders of the bonds secured hereby, that the said Trust Company, the trustee herein, shall not be required to look beyond the certificate or certificates of the President or Chief Engineer, as the case may be, as herein provided, and shall not be responsible in any event for any act done in pursuance of such certificate or certificates.

Tenth. The party of the first part, its successors and assigns, shall and will duly execute to the party of the second part and its successors and assigns such further deeds, conveyances and assurances in the law, for the better assuring to the party of the second part and its successors and assigns upon and for the trusts and purposes aforesaid, all and singular the premises above granted and described, or intended to be granted and included in the lien of these presents, as shall from time to time be reasonably required by it, party of the second part and its successors.

Eleventh. In case, by reason of resignation or otherwise, during the existence of the trusts hereby created, there shall occur or be a vacancy in the office of the trustee hereinbefore named, the same may be filled by appointment, in writing, executed by the holders of at least one-half in amount of the said bonds which shall then be unpaid and outstanding. Nothing herein contained however shall be so construed as to prohibit or prevent the due filling of such vacancy, by authority, by a court of competent jurisdiction, in a proceeding to which the then holders of the said bonds and the party of the first part are duly made parties, or of which they have had due or reasonable notice.

Twelfth. The party of the first part, by resolution of its Board of Directors, authorized or approved at a meeting of its stockholders, hath authorized these presents to be duly executed to the parties of the second part. But nothing therein contained is to be in anywise construed as subjecting to personal liability, in the premises, the officers or stockholders of

the party of the first part, or any or either of them, or their or his personal or individual estate.

In Witness Whereof the Saint Louis, Des Moines and Northern Railway Company, in pursuance of the resolutions aforesaid, has caused these presents to be executed by its President and attested by its Secretary, and has caused its corporate seal to be hereunto affixed the day and year first aforesaid; and the Mercantile Trust Company has also executed the same, to evidence its acceptance of the trust hereby created, the day and year aforesaid.

(Seal) ST. LOUIS, DES MOINES & NORTHERN RAILWAY COMPANY,

By J. S. Clarkson, President.

Attest:

J. S. Polk, Secretary.

MERCANTILE TRUST COMPANY,

Trustee.

By President.

Attest:

..... Secretary.

State of Iowa,

County, Polk—ss.

Be it remembered that on this first day of February, 1882, personally came before me, the undersigned, a Notary Public, within and for the county aforesaid, J. S. Clarkson, who, being by me duly sworn, doth depose and say that he is the President of the St. Louis Des Moines and Northern Railway Company grantor in the foregoing instrument; that the name of said company is signed to said instrument by him, as President of said company, by virtue of the order of the Board of Directors; that the seal of the company attached thereto is the proper and genuine seal of said company and is affixed thereto by order of said Board of Directors. And the said J. S. Clarkson as President, acknowledged the foregoing instrument to be the act and deed of the St. Louis, Des Moines and Northern Railway Company, for the uses and purposes therein expressed.

In Witness Whereof, I have hereunto set my hand and affixed my notarial seal of office, this first day of February, 1882.

(Seal)

(Sgd.) C. HUTTENLOCHER,
Notary Public.

County of Polk—ss.
State of Iowa,

Be it remembered that on this first day of February, 1882, personally came before me, the undersigned, a Notary Public within and for the county aforesaid, J. S. Polk, who, being by me duly sworn, doth depose and say that he is the Secretary of the St. Louis, Des Moines and Northern Railway Company grantor in the foregoing instrument; that he countersigned the said instrument and affixed the seal of the company thereto by order of the Board of Directors thereof.

In Witness Whereof, I have set my hand and affixed my notarial seal of office, this first day of February, 1882.

(Seal)

(Sgd.) C. HUTTENLOCHER,
Notary Public.

This Indenture made and entered into this 2nd day of October, 1889, by and between the St. Louis, Des Moines & Northern Railway Company, party of the first part, and the Mercantile Trust Company, party of the second part, Witnesseth, that,

Whereas, the party of the first part did on the first day of February 1882, execute and deliver to the party of the second part a trust mortgage upon its property to secure certain bonds, and

Whereas there was omitted from the description of the property conveyed by said mortgage a part of the road of party of the first part which should have been included, and,

Whereas the Board of Directors of the party of the first part has this day authorized its president, and assistant Secretary to execute and deliver a supplement to said mortgage so that said omitted property shall be included in said mortgage.

Now, therefore, the St. Louis, Des Moines & Northern Railway Company, by this indenture doth grant, bargain, sell and convey unto the Mercantile Trust Company, as Trustee, and to its successor or successors in Trust, all that portion of its line of railroad lying between Farnham Street in the City of Des Moines, and the western corporate limits of said City, being situated in the County of Polk and State of Iowa, together with all the appurtenances thereto belonging or therein included, and also all its interest of whatever kind in the obligations or stock of the Des Moines Union Railway Company, and all its property of whatever name or nature, not included and covered by said original mortgage.

This grant is intended to be supplemental to the said original mortgage so executed by the party of the first part to the party of the second part, which original mortgage was filed for record in the Recorder's office of Polk County, Iowa, on the eighth day of March, 1882, and recorded in book 104 of mortgage records at page 336; and this grant is made upon defeasances, conditions and provisions contained in said original mortgage and is to be taken and held as though the above description had been used therein.

In Witness Whereof The St. Louis, Des Moines & Northern Railway Company in pursuance of the resolution aforesaid, has caused these presents to be executed by its President and attested by its Assistant Secretary, and has caused its corporate seal to be hereunto affixed this second day of October 1889.

By G. M. Dodge, President,
F. M. Hubbell, Assistant Secretary.

State of Iowa,
Polk County—ss.

Be it remembered that on this 2nd day of October, 1889, personally came before me, the undersigned, a Notary Public, within and for the County aforesaid, Grenville M. Dodge, who being by me duly sworn, doth depose and say that he is President of the St. Louis, Des Moines & Northern Railway Company, grantor in the foregoing instrument; that the name of said company is signed to said instrument by him, as President of said company, by virtue of the order of the Board of Directors; that the seal of the company attached thereto is the proper and genuine seal of said company, and is affixed thereto by order of said Board of Directors. And the said Grenville M. Dodge, as President acknowledged the foregoing instrument to be the deed and act of the St. Louis, Des Moines & Northern Railway Company, for the uses and purposes therein expressed.

In Witness Whereof, I have hereunto set my hand and affixed my notarial seal of office, this 2nd day of October 1889.

JAMES P. HEWITT,
Notary Public, Polk County, Iowa.

State of Iowa,
Polk County—ss.

Be it remembered that on this 2nd day of October 1889, personally came before me, the undersigned, a Notary Public within and for the County aforesaid F. M. Hubbell, who,

being by me duly sworn, doth depose and say; that he is the assistant Secretary of the St. Louis, Des Moines & Northern Railway Company, grantor in the foregoing instrument; that he countersigned the said instrument and affixed the seal of said company thereto by order of the Board of Directors thereof.

In Witness Whereof, I have hereunto set my hand and affixed my notarial seal of office, this 2nd day of October 1889.

JAMES P. HEWITT,
Notary Public, Polk County, Iowa.

Endorsed: Filed Oct. 7, 1889. E. R. Mason, Clerk.

In the Circuit Court of the United States in and for the Southern District of Iowa, Central Division.

The Mercantile Trust Company

No. vs.

St. Louis, Des Moines & Northern Railway Company.

Comes now the St. Louis, Des Moines & Northern Railway Company, the defendant above named and waives the service of subpoena herein & time for appearance & answer. And thereupon answering the Bill herein it admits all the allegations thereof & consents that a decree thereon may be entered at once.

(Sgd.) THE SAINT LOUIS, DES MOINES &
NORTHERN RAILWAY CO.

(Seal) By F. M. Hubbell, Assistant Secretary.

Endorsed: Filed Oct. 15, 1889. Ed. R. Mason, Clerk.

EXHIBIT 49.

In the Circuit Court of the United States; in and for the Southern District of Iowa, Central Division.

The Mercantile Trust Company Complainant,

vs.

The St. Louis Des Moines & Northern Railway Company,
Defendant.

October Term 1889.

Decree.

This cause coming on for hearing on this 15 day of October 1889, being one of the days of the October Term 1889 of said court; the complainant, the Mercantile Trust Company appeared by Cummins & Wright, its solicitors, and the defendant the St. Louis Des Moines & Northern Railway Com-

pany appeared by Loren W. Reynolds, its solicitor, and thereupon it appearing to the court that the said defendant has filed its answer admitting the allegations of the bill, and that its said solicitor duly authorized to appear herein has filed in this case its admission of the truth of the allegations of the bill of complaint, its consent that a decree upon said bill may be entered at once, and its approval of the terms and provisions of this decree, the court thereupon by and with the consent of said defendant upon the proof submitted, finds:

That the defendant, the St. Louis Des Moines & Northern Railway Company is a corporation organized under the laws of the State of Iowa, and is the owner of a certain line of railway extending from Farnham Street in the City of Des Moines, Polk County, Iowa, through the counties of Polk, Dallas and Boone, to the city of Boone in said last named County, together with certain real and personal property, appurtenant thereto, and franchises thereof; that on the first day of February 1882, the said St. Louis Des Moines & Northern Railway Company, for the purpose of securing the payment of certain bonds, to be issued by said defendant, to the extent of eight thousand dollars per mile of completed roadway, executed and delivered to the Complainant the Mercantile Trust Company, as Trustee, its certain trust mortgage; that in and by the said mortgage there was conveyed to the said complainant as trustee, its line of railroad, between the western boundary of the City of Des Moines, Iowa, and the City of Boone aforesaid, together with all the real estate necessary for and used in the operation of said road, its right of way, embankments, bridges, turn-outs, side tracks, buildings and structures, water tanks, and fixtures, shops, engine and other houses, depots, turn tables, engines, cars, machinery, tools, and all its railroad property whether then or thereafter acquired, and everything appurtenant thereto or used in connection therewith, together with all rents, issues, tolls and earnings thereof. And it was further provided in said trust mortgage that said conveyance did not include the branch or extension of the railroad extending from Clive to Waukee in the County of Dallas, and included and undivided half interest only in the railroad and appurtenances lying between the City of Des Moines and the said town of Clive.

The court further finds and adjudges that the line of said mortgage attached to all the property hereinbefore described, that is to the line of railroad then or thereafter constructed from the said western boundaries of the City of Des Moines to said City of Boone, with all the property appurtenant thereto, hereinbefore more specifically described, and that the said

lien is now in full force and effect thereon. The court further finds that the said mortgage was duly recorded in the counties of Polk, Dallas and Boone, and that a true copy thereof is attached to the bill of complaint herein.

The court further finds that on the 2nd day of October, 1889, the defendant executed and delivered to the complainant a certain supplemental mortgage for the purpose of better securing the bonds aforesaid; that in and by said supplemental mortgage the said defendant for said purposes conveyed unto the complainant all that portion of the defendant's line of railroad (being a one-half interest therein) lying between Farnham Street in the City of Des Moines and the western corporate limits of said city, and being situated in the county of Polk and State of Iowa, together with all the appurtenances thereto belonging or therein included, and also all its interest of whatever kind in the obligations or stock of the Des Moines Union Railway Company, and all its property of whatever name and nature not included and covered by said original mortgage, and that said supplemental mortgage was made and delivered upon all the conditions and provisions contained in said original mortgage, and that a true copy thereof is attached to the bill of complaint filed herein.

The court further finds that the defendant, the St. Louis Des Moines & Northern Railway Company issued bonds according to the terms and provisions of said trust mortgage to the extent in the aggregate of \$303,000.00 and that the same were so issued in the year 1882. That the said bonds were sold for a valuable consideration and are now outstanding and wholly unpaid.

The court further finds that no part of the interest evidenced by certain interest coupons attached to the said bonds has been paid, and that all the interest accruing upon all of said bonds since their issuance and sale now remains unpaid. That the first installment of interest due thereon matured on the first day of February 1882, and that there is now due upon said interest coupons from defendant the sum of one hundred and eighty three thousand seven hundred seventy 08/100 dollars (\$183,770.08).

The court further finds that demand for the payment of the said interest coupons was at their maturity duly made, and that prior to the filing of the bill herein the complainant by reason of the failure to pay said interest coupons and in accordance with the terms and provisions of said mortgage exercised its option to declare the entire sum secured by said mortgage due and payable and prior to the filing of said bill

gave notice to the defendant that it had so exercised said option and declared all bonds secured by said mortgage due and payable.

And now the court being fully advised in the premises, doth hereby adjudge and decree that within ten days from the date of entering this decree the said defendant the St. Louis Des Moines & Northern Railway Company shall pay to the Mercantile Trust Company, as trustee, the full sum of money hereinbefore declared to be due upon said bonds, and for said unpaid interest, to-wit: The sum of four hundred eighty-six thousand, seven hundred seventy 08/100 Dollars (\$486,770.08), together with interest upon said last mentioned sum at the rate of six per cent per annum from this date, and all the costs of this suit; that if the said defendant shall fail within the period aforesaid to pay said sums of money, it is adjudged and decreed; that the said mortgages heretofore referred to, and copies of which are attached to the bill herein, be, and the same are hereby foreclosed, and that all the property, rights, franchises and interest of the defendant aforesaid, to-wit: its line of railroad extending from Farnham Street in the city of Des Moines, Polk County, Iowa, to Clive, and through the counties of Polk, Dallas and Boone, to the City of Boone in said last named county, together with all its real estate necessary for and used in the operation of said road, its right of way, embankments, bridges, turnouts, side tracks, buildings and structures, water tanks and fixtures, shops, engine and other houses, depots, turn tables, tracks, engines, cars, machinery, tools, rents, issues, tolls and earnings, its interest of whatever kind in the obligations or stock of the Des Moines Union Railway Company, all its railroad property, and all its property of whatever name or nature (or so much thereof as may be necessary to pay and satisfy said sums), be sold to pay and satisfy the said sums of money so found to be due from the defendant to the complainant as trustee.

It is further adjudged and decreed that the sale of said property rights and interests be without redemption; and that the said sale upon due confirmation and upon the payment of the purchase price of said property shall forever bar and foreclose all right, title or interest or equity of redemption of the said St. Louis, Des Moines & Northern Railway Company, in the said property so ordered to be sold, which is conveyed by said mortgages, and in each and every part thereof; and also shall forever bar and foreclose all the right, title and interest or equity of redemption of all persons claiming through, or under the said defendant, but it is expressly provided that such sale shall be without prejudice to the liens if any, of all persons not defendants hereto, who are now, or at the date of

such sale, shall be legally or equitably entitled to a lien upon said mortgaged property or any part thereof. And also without prejudice to the rights and equities of parties holding at the date of such sale claims or demands entitled to payment in preference to said mortgage indebtedness. And this court expressly reserves full jurisdiction of this cause, of said property and the proceeds thereof, and of the parties hereto, so far as it may be necessary to protect such lien-holders and other preferred claimants.

It is further adjudged and decreed that the property aforesaid be sold at public auction to the highest bidder or bidders. Such sale shall be held at the east door on court avenue of the United States Court House in the city of Des Moines in said county and state, between the hours of ten A. M. and four P. M., of such day as the commissioner hereinafter named shall appoint. Said commissioner shall give notice of the time, place and terms of said sale by a printed publication at least once each week for four successive weeks, the last publication to be not less than five days before said sale, in the Iowa State Register, a newspaper published in said City of Des Moines, Iowa.

It is further adjudged and decreed that the highest bidder at such sale, may pay all or any part of the purchase price of said property in the said bonds of the defendant company at their face value, with accrued interest. Such bonds so offered as a part of the purchase price being by such commissioner at the time cancelled and satisfied; provided that so much of said purchase price as is necessary to pay the costs of this suit including the sum hereafter allowed as an attorney's fee, for the complainant, under the terms of said mortgage, be paid in cash.

It is further adjudged and decreed that each bidder shall before his bid is received by the commissioner making such sale, deposit with the said commissioner the sum of five thousand dollars, either in cash or in said bonds, and the condition of such deposit shall be, that if the property is sold to any such bidder, and he fails to comply with the terms of the sale upon his part, or to pay the full purchase price which he agrees to pay, then the sum so deposited shall be forfeited, and shall be used in the payment of said bonds, and all such deposits made by unsuccessful bidders shall at once be returned to them.

It is further adjudged and decreed that the said commissioner immediately upon making the said sale shall report all his acts and doings therein to this court for confirmation, and when his report is confirmed, which may be done immediately upon its presentation, the said commissioner shall execute to such purchaser or purchasers all such deeds of conveyance and transfers as may be necessary to vest in and convey to the said

purchaser or purchasers an absolute and unqualified title in and to all the property conveyed by said mortgages and herein ordered to be sold.

It is further adjudged and decreed that the commissioner executing this decree and making such sale shall apply the proceeds thereof in the manner following:

First: To the payment of all the costs of this cause, including all expenses of making said sale and afterwards enforcing and carrying out this decree, including the solicitor's fee to the complainant for the foreclosure of said mortgages.

Second: To the payment of the bonds aforesaid so far as the same can be paid out of the proceeds of said sale, or by the application of the said bonds so offered as a part or a whole of the purchase price.

It is further ordered that George F. Henry be, and he is hereby appointed Commissioner to make the sale herein, ordered to be made, and to execute this decree to the full extent herein prescribed, and he is required to make full and immediate report of his doings to this court.

O. P. SHIRAS, Judge.

Approved LOREN W. REYNOLDS, Solr.

Filed Oct. 15, 1889. Ed. R. Mason, Clerk.

In the Circuit Court of the United States in and for the Southern District of Iowa, Central Division.

The Mercantile Trust Company

vs.

St. Louis Des Moines & Northern Railway Company.

Comes now the St. Louis, Des Moines & Northern Railway Company by Lorán Reynolds, its duly authorized solicitor and waives the service of subpoena herein; and thereupon it admits the allegations of the bill of complaint filed in this cause, approves the decree now presented, and consents that said decree may be entered at once.

THE ST. LOUIS DES MOINES & NORTHERN RAILWAY COMPANY,

By Lorán M. Reynolds,
Its Sol'r.

Filed Oct. 15, 1889. Ed. R. Mason, Clerk.

United States Circuit Court Southern District of Iowa,
Central Division.

I, Edward R. Mason, Clerk of said Court for said District do hereby Certify that the foregoing is a full, true and complete copies of the Decree, Appearance and Answer of Defendant by Loran M. Reynolds and Appearance and Answer of Defendant by F. M. Hubbell in the case of The Mercantile Trust Company, Plaintiffs, vs. St. Louis, Des Moines & Northern Railway Company, Defendant, as full, true and complete as the original of the same now remains on file of record in my office.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Court at office in the City of Des Moines in said District this 10th day of December, A. D. 1909.

(Seal)

EDWARD R. MASON,
Clerk U. S. Circuit Court, Southern District of
Iowa.

EXHIBIT 50.

In the United States Circuit Court, Southern District of Iowa,
Central Division.

The Mercantile Trust Company
vs. In Chancery.

The St. Louis, Des Moines & Northern Railway Co.

Report of Sale.

To the Honorable Judges of said Court in Chancery Sitting:

In pursuance of a decretal order of this Honorable Court, made in the above cause and dated Oct. 15th, 1889, I, the undersigned, as commissioner of this Court named in said decree do report:

That all and singular the Mortgaged Premises mentioned in the Complainant's Bill and in the decree in this cause, were sold by me at public auction at the East door on Court Avenue of the United States Court House in the City of Des Moines, in said District, on the 22 day of November, 1889; that previous to such sale I gave public notice of the time and place thereof, by advertisement containing a brief description of such premises, published in the Iowa State Register, a newspaper published at Des Moines, in the County of Polk, State of Iowa, and District aforesaid as directed in said decree. I, also, posted copies of said notice and caused to be served copies of the same upon the occupants of the premises so sold to-wit: the St. Louis, Des Moines & Northern R. Co. A copy of said notice with affidavit of publication, is hereto attached, marked "Exhibit A" and made a part of this report.

A copy of the notice so as above posted and served upon the said Railway Co. the owner of said premises, together with the return of service thereon, is hereto attached and made a part of this Report, marked "Exhibit B".

That at such sale the said premises were struck of as follows: Solon Humphreys and J. T. Granger offered for said property hereinafter described the sum of Four hundred and seventy-five thousand, One hundred eighty-seven & 81/100 (475,187.81) Dollars and this being the only bid made or received by me, I declared said property sold to Solon Humphreys and J. T. Granger for said sum of \$475,187.81. The said parties in accordance with the terms of the decree herein delivered to me the sum of \$1005.17 in cash to cover the Court costs and costs of sale herein and the balance of their bid, to-wit: the sum of \$474,182.64 was paid in the bonds Nos. One (1) to two hundred & eighty-eight (288) both inclusive, of the defendant Railway Co. with the coupons belonging thereto, which bonds and coupons cancelled by me are returned with this report.

And further, that I have executed to the said Solon Humphreys and J. T. Granger a deed of the premises so sold by me and which premises as described in the said Bill of Complaint, decretal order, and in the said Deed executed by me, are as follows, to-wit:

All the property, rights, franchises and interests of the defendant railway company, to-wit: its line of railroad extending from Farnham Street in the city of Des Moines, Polk County, Iowa, to Clive, and through the counties of Polk, Dallas and Boone, to the city of Boone in said last named county, together with all its real estate necessary for and used in the operation of said road, its right of way, embankments, bridges, turn-outs, side-tracks, buildings and structures, water tanks and fixtures, shops, engine and other houses, depots, turn tables, tracks, engines, car, machinery, tools, rents, issues, tolls and earnings, its interest of whatever kind in the obligations or stock of the Des Moines Union Railway Company, all its railroad property, and all its property of whatever name or nature (the interest of said railway company in the railroad and appurtenances lying between Farnham street in the city of Des Moines and the town of Clive, being an undivided one-half interest). Said sale did not include the corporate franchise of the defendant, the St. Louis, Des Moines & Northern Railway Company.

I submit herewith a copy of the deed executed by me to the purchasers at such sale.

Principal of Judgment	\$486,770.08
Int. to day of sale.....	3,001.69
Attorney's fee	750.00
Costs	39.55
Costs of sale	215.62

\$490,776.94

Amt. of Bid	475,187.81
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Deficiency	\$ 15,589.13
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All of which is respectfully submitted.

Nov. 22, 1889.

(Sgd.)

GEO. F. HENRY,
Commissioner & etc.

Endorsed: Filed Nov. 28, 1889. Ed. R. Mason, Clerk.

Exhibit "A".

Affidavit of Publication.

State of Iowa,
Polk County—ss.

R. P. Clarkson, being sworn, says he is publisher of The Iowa State Register, a newspaper published in Des Moines, Polk County, Iowa, and that the notice of which the annexed is a printed copy, was published in said Iowa State Register for four consecutive weeks, the first publication being on the 26th day of October and the last on the 16th day of November, A. D. 1889.

(Sgd.) R. P. CLARKSON.

Subscribed and sworn to by the said R. P. Clarkson, before me, this 16th day of Nov. 1889.

(Seal)

(Sgd.) W. W. PIERCE,

Notary Public, Polk County, Iowa.

United States Circuit Court, Southern District of Iowa,
Central Division.

The Mercantile Trust Company
No. 2251. vs. In Equity.

The St. Louis, Des Moines & Northern Railway Company.

Public notice is hereby given that in pursuance of a decree of said court, entered in said cause on the 15th day of October, A. D., 1889, I, the undersigned, the Commissioner named in said decree, will, on the 22d day of November, A. D. 1889, at 11 o'clock A. M. of the said day, at the east door on Court Avenue of the United States Court House in Des Moines, in

said district, sell at public auction to the highest and best bidder for cash, or the bonds of said railroad company, the property described in said decree, and described as follows, viz.:

All the property, rights, franchises and interests of the defendant railway company, to-wit: its line of railroad extending from Farnham street in the city of Des Moines, Polk County, Iowa, to Clive, and through the counties of Polk, Dallas and Boone, to the City of Boone in said last named county, together with all its real estate necessary for and used in the operation of said road, its right of way, embankments, bridges, turn-outs, side-tracks, buildings and structures, water tanks and fixtures, shops, engine and other houses, depots, turn-tables, tracks, engines, cars, machinery, tools, rents, issues, tolls and earnings, its interests of whatever kind in the obligations or stock of the Des Moines Union Railway Company, all its railroad property, and all its property of whatever name or nature (the interest of said railway company in the railroad and appurtenances lying between Farnham street in the city of Des Moines and the town of Clive, being an undivided one-half interest) or so much thereof as may be necessary to satisfy the sum of four hundred and eighty-six thousand seven hundred seventy and 08/100 dollars, with interest at the rate of six per cent per annum, and the further sum of seven hundred seventy and fifty dollars, with interest thereon at the rate of six per cent per annum, and the costs of suit and accruing costs. Geo. F. Henry Commissioner, U. S. C. C. Southern District of Iowa. Messrs. Cummins & Wright, complainant's solicitors; residence, Des Moines."

Exhibit "B".

Service of the above notice is hereby admitted, Oct. 28, 1889.

ST. LOUIS, DES MOINES & NORTHERN
RAILWAY CO.,

By A. B. Cummins, Vice-Prest.

"United States Circuit Court, Southern District of Iowa,
Central Division.

The Mercantile Trust Company
No. 2251. vs. In Equity.

The St. Louis, Des Moines & Northern Railway Company.

Public notice is hereby given that in pursuance of a decree of said court, entered in said cause, on the 15th day of October, A. D. 1889, I, the undersigned, the Commissioner named in the said decree, will, on the 22d day of November, A. D. 1889, at 11 o'clock A. M. of the said day, at the east door on

Court Avenue of the United States Court House, in Des Moines in said district, sell at public auction to the highest and best bidder for cash, or the bonds of said railroad company, the property described in said decree, and described as follows, viz:

All the property, rights, franchises and interests of the defendant railway company, to-wit: Its lines of railroad extending from Farnham street in the city of Des Moines, Polk County, Iowa, to Clive, and through the counties of Polk, Dallas and Boone to the city of Boone, in said last named county, together with all its real estate necessary for and used in the operation of said road, its right of way, embankments, bridges, turn-outs, side-tracks, buildings and structures, water tanks and fixtures, shops, engine and other houses, depots, turn-tables, tracks, engines, cars, machinery, tools, rents, issues, tolls and earnings, its interest of whatever kind in the obligations or stock of the Des Moines Union Railway Company, all its railroad property, and all its property of whatever name or nature (the interest of said railway company in the railroad and appurtenances lying between Farnham street in the city of Des Moines and the town of Clive, being an undivided one-half interest) or so much thereof as may be necessary to satisfy the sum of four hundred and eighty-six thousand seven hundred seventy and 08/100 dollars, with interest at the rate of six per cent per annum, and the further sum of seven hundred and fifty dollars, with interest thereon at the rate of six per cent per annum, and the costs of suit and accruing costs. Geo. F. Henry, Commissioner U. S. C. C. Southern District of Iowa. Messrs. Cummins & Wright, complainant's solicitors; residence, Des Moines."

Copy of Deed.

N. T. G. J. C. C.

Exhibit 51.

This Indenture, made the 22nd day of November, in the year of our Lord, 1889, between Geo. F. Henry, Commissioner named in the decree of the United States Circuit Court, within and for the Southern District of Iowa, in the cause hereinafter referred to, dwelling in the City of Des Moines in said District, of the first part, and Solon Humphreys and J. T. Granger, of the second part, witnesseth.

Whereas, at a term of the United States Circuit Court for the Southern District of Iowa, begun and held at the City of Des Moines in said District, on the 15th day of October, 1889, it was among other things, ordered, adjudged and decreed, by said Court in a certain cause then pending in the said Court, between the Mercantile Trust Company, complainant and the St. Louis, Des Moines & Northern Railway Company, defendant, that the mortgage premises mentioned and set forth in complainant's Bill, and the decree of said court, and hereinafter particularly described, be sold by, or under the direction of Geo. F. Henry, as Commissioner of said Court, the said Commissioner first giving such notice of the time and place of such sale as is required by the terms of such decree.

And Whereas, the said Geo. F. Henry, Commissioner aforesaid, and party of the first part to these presents, in pursuance of the said order and decree of said Court, did, on the 22nd day of November 1889, sell at public auction, at the east door on Court Avenue, of the United States Court House, in Des Moines, in said Southern District of Iowa, the said mortgaged premises hereinafter particularly described, having first given due notice of the time and place of such sale, as required by the said order and decree of said court, at which sale the said mortgaged premises, hereinafter particularly described, were struck off to Solon Humphreys and J. T. Granger, for the sum of Four Hundred Seventy-five Thousand one hundred eighty-seven 81/100 Dollars, that being the highest sum bidden for the same, and

Whereas, the said sale was by the terms of said decree made without redemption,

Now, Therefore, this indenture witnesseth, that Geo. F. Henry, Commissioner as aforesaid, and the party of the first part to these presents, in order to carry into effect the said sale so made as aforesaid, in pursuance of the said decree of the said Court, and in consideration of the said sum of Four Hundred seventy-five thousand one hundred eighty-seven 81/100 Dollars, paid by the said purchasers at said sale, hath granted, bargained and sold, aliened, released, conveyed and confirm-

ed, and by these presents doth grant, bargain and sell, alien, release, convey and confirm unto the said parties of the second part, and to their heirs and assigns forever, all the right, title, interest, estate and property of the said St. Louis, Des Moines and Northern Railway Company, as well as the interest of all persons claiming by, through or under them since the date of the mortgage, to-wit: on the first day of February, 1882, as to the first mortgage, and the 2nd day of October, 1889, as to the second mortgage, in and to the following described premises, to-wit:

All the property, rights, franchises and interests of the defendant railway company, to-wit: its line of railroad extending from Farnham Street, in the City of Des Moines Polk County, Iowa, to Clive, and through the Counties of Polk, Dallas & Boone, to the City of Boone, in said last named County, together with all its real estate necessary for and used in the operation of said road, its right of way, embankments, bridges, turn-outs, side-tracks, buildings and structures, water tanks and fixtures, shops, engines and other houses, depots, turn-tables, tracks, engines, cars, machinery, tools, rents, issues, tolls and earnings, its interest of whatever kind in the obligations or stock of the Des Moines Union Railway Company, all its railroad property, and all its property of whatever name or nature, except the franchise of the said St. Louis, Des Moines & Northern Railway Company to be a corporation, which franchise was not sold by said Commissioner, nor purchased by said Humphreys and Granger, together with all and singular the rights, members, privileges, hereditaments and appurtenances to the same belonging, or in any wise appertaining. To have and to hold all and singular the said premises above mentioned and described, and hereby granted and conveyed, or intended so to be, with the appurtenances unto the said parties of the second part, their heirs and assigns forever.

In Witness Whereof, the said Geo. F. Henry, Commissioner as aforesaid, hath hereunto set his hand the day and year first above written.

(sgd.) GEO. F. HENRY,
Commissioner U. S. Circuit Court,
Southern District of Iowa.

State of Iowa,
County of Polk—ss.

On this 22nd day of November, 1889, before me, a Notary Public in and for Polk County, Iowa, personally appeared Geo. F. Henry, Commissioner of the United States Circuit Court, for the Southern District of Iowa, who is personally

known to me to be the identical person who signed the foregoing deed as grantor, and acknowledged the same to be his voluntary act and deed for the purposes therein specified.

Witness my hand and seal the day and year above written.

(Seal)

(Sgd.) JOHN D. JORDAN,
Notary Public in and for Polk County, Iowa.

Exhibit 52.

In the Circuit Court of the United States, Southern District
of Iowa, Central Division.

The Mercantile Trust Company,
No. 2251. vs. Eq.

St. Louis, Des Moines and Northern Railway Company.

This cause coming on for hearing this 23rd day of November, 1889, upon the report of the Commissioner, George F. Henry, Esq. heretofore appointed by the decree of this court to sell the railroad property, described in the decree entered herein; and it appearing to the court that upon due notice and as provided in said decree and in strict conformity with all its terms and provisions, the said commissioner did on the 22nd day of November, sell said property to Solon Humphreys and J. T. Granger, and it further appearing from the petition of the complainant and said Humphreys and Granger that all the creditors of the defendant railway company, except employes, have consented to the prayer of said petition, and it further appearing that the defendant has filed herein its consent to an immediate confirmation of said sale, and the court having accepted the bond tendered in the petition aforesaid conditioned to pay all such claims against said railway company as may be adjudged by the court to be liens upon said property, prior and paramount to the mortgages foreclosed herein or equitably entitled to payment as against the same, and the court being now fully advised in the premises doth order, adjudge and decree that the sale of the said railroad property under said decree as shown by said commissioners report, namely, to the said Solon Humphreys and J. T. Granger be and the same is hereby confirmed, approved and made absolute; and the said George F. Henry commissioner as aforesaid, is hereby authorized and directed to immediately execute to said Solon Humphreys and J. T. Granger a good, sufficient and absolute deed of conveyance of all the property so ordered to be sold and purchased by them, which conveyance shall vest in the purchasers all the right and title which in law or equity can be transferred or acquired under or by virtue of a foreclosure of said mortgages.

It is further ordered and adjudged that all persons having claims, the payment of which is secured by the aforesaid bond, shall present the same in this cause by proper petition at least thirty days before the next term of this court.

Signed in open Court. Oct. Term 1889, to-wit, on this 23rd Nov. 1889.

(Sgd.) J. M. LOVE, Judge.

Endorsed: Filed Nov. 23, 1889. Ed. R. Mason, Clerk.

Exhibit 53.

Articles of Incorporation
of the

Des Moines and Northern Railway Company.

Be it Known that we, whose names are hereto subscribed, being citizens and residents of the State of Iowa, do hereby associate ourselves together as a body corporate, in accordance with the laws of said state relating to corporations for pecuniary profit and do hereby adopt the following Articles of Incorporation:

Art. 1.

The name of the corporation shall be Des Moines and Northern Railway Company.

Art. 2.

The principal office of the corporation for the transaction of its business shall be at Des Moines, Polk County, Iowa; But it may establish such other offices and financial agencies in other counties and states as may be required for the proper and convenient management of its affairs.

Art. 3.

The objects of the corporation are as follows, to-wit: To locate, construct, purchase, lease, own, operate and maintain lines of railway, extending as follows: From Des Moines, in the County of Polk, State of Iowa, northerly through the city of Boone, County of Boone, State of Iowa, and through the Counties of Polk, Dallas, Boone, Hamilton, Wright, Hancock, and Winnebago, to the northern boundary of said state; and from Des Moines, aforesaid, southerly through the city of Albia in the county of Monroe, and through the counties of Polk, Warren, Marion, Monroe, Appanoose and Davis, to the southern boundary of said state, or to locate, construct, purchase, lease, own, operate and maintain any part of the lines so described, or through any one or more of the counties so named. To locate, construct, purchase, own, lease, operate and maintain

connecting lines of railways in other states, so far as it may be authorized by the laws thereof. To locate, construct, purchase, own, lease, operate and maintain all such branches as may be determined upon by said corporation. To locate, construct purchase, own, lease, operate and maintain all such tracks, switches, side tracks and branches as may be convenient or necessary to reach coal mines, stone quarries, gravel beds, manufactories, or other sources of freight traffic. To purchase, lease, own and operate coal mines, stone quarries, elevators and warehouses, reasonably adjacent to its lines of railway. To locate, construct, purchase, lease, own and operate a telegraph line along all its lines of railway. And to effect these objects the said corporation shall have and enjoy all the powers granted by the laws of the said state of Iowa to railway corporations, including the power to condemn private property as provided by statute and to make all such contracts of whatever nature or description as may be convenient or necessary to enable the said corporation to accomplish the said objects or any or either of them.

Art. 4.

The capital stock of the corporation shall be Five Million Dollars (\$5,000,000.00) divided into shares of One Hundred Dollars (\$5,000,000.00) divided into shares of One Hundred Dollars (\$100.) each; such shares shall be evidenced by certificates duly signed by the president or vice president and secretary or assistant secretary and attested by the seal of said corporation; they shall be transferrable only upon the books of the corporation and the by laws shall provide when and how said transfers shall be made.

Art. 5.

Each share of capital stock shall be fully paid when the certificate therefor is issued and the possession of a certificate shall be accepted as conclusive evidence that the shares therein named have been fully paid and are non-assessable.

Art. 6.

The board of directors hereinafter provided for shall be authorized to accept property in payment of shares of stock at such price or valuation as they by resolution, may declare, and such proceedings shall be recorded in the books of the company and shall be open for inspection by anyone interested therein.

Art. 7.

The affairs of the corporation shall be conducted by a board of directors consisting of not less than five nor more than nine persons; Such directors shall be chosen by the stockholders at

their annual meetings, and shall hold their offices for one year, or until their successors are elected and qualified. Any vacancy occurring during such year, shall be filled by the remaining members of the board.

Art. 8.

The executive officers of the corporation shall be a president, vice-president, secretary, assistant secretary and treasurer. They shall be chosen by the board of directors at its first meeting after the annual meeting of stockholders, shall hold their offices for one year, or until their successors are selected and qualified. Any vacancy occurring during such year shall be filled by the board as soon as practicable.

Art. 9.

The board of directors shall have the power and it shall be its duty to establish by laws not inconsistent with these articles, nor with the laws of the state, prescribing rules for the management of said corporation, and defining the powers and duties of its officers, and providing for the times and places of its own meetings.

Art. 10.

The executive officers of the corporation shall have such powers and perform such duties as usually pertain to their respective offices, and also such as may be provided in the by laws, but all written contracts or conveyances to be executed by the corporation must be signed by the president and secretary, or assistant secretary, and attested with the seal, unless otherwise ordered by the board of directors.

Art. 11.

The stockholders shall hold their regular annual meeting on the first Thursday of January of each year at the office of the corporation in Des Moines Iowa, beginning with the first Thursday of January 1890.

Art. 12.

Special meetings of the stockholders may be called by the secretary or assistant secretary at any time, and must be so called upon the written request of either the president, three directors or stockholders holding one-third of the capital stock then issued. Ten days notice of any such meeting must be given to each stockholder by mailing such notice to his last known place of residence.

Art. 13.

The Articles of Incorporation may be amended at any regular or special meeting of the stockholders by the vote of the

stockholders owning or holding a majority of all the stock then issued; but if an amendment is to be proposed at a special meeting, the notice of the meeting must state the substance of such amendment.

Art. 14.

At all meetings of the stockholders, votes may be cast either in person or by proxy; but if by proxy written authority therefor must be filed with the secretary or assistant secretary.

Art. 15.

Until the first meeting of the stockholders on the first Thursday of January 1890, the board of directors of the corporation shall consist of A. B. Cummins, L. M. Martin, R. L. Chase, F. M. Hubbell, and Carroll Wright. Such directors shall as soon as the corporation is authorized to begin business meet, organize and select the executive officers who shall serve until their successors are elected and qualified.

Art. 16.

It shall not be necessary in order to enable the corporation to carry on the business for which it is organized that all its authorized capital stock be subscribed or taken.

Art. 17.

The corporation shall commence on the 19th day of November 1889, and continue for a period of fifty years, unless sooner dissolved according to law.

Art. 18.

The private property of the stockholders shall be exempt from the corporate debts.

Art. 19.

The highest amount of indebtedness or liability to which the corporation shall at any one time be subject shall not exceed two-thirds of its capital stock.

In witness whereof we have hereunto set out our hands this 19th day of November 1889.

A. B. CUMMINS,
L. M. MARTIN,
R. L. CHASE,
F. M. HUBBELL,
CARROLL WRIGHT.

State of Iowa,
County of Polk—ss.

Be it remembered that on this 19th day of November 1889, before me, a notary public in and for the County of Polk, and State of Iowa, personally came A. R. Cummins, L. M. Martin, R. L. Chase, F. M. Hubbell and Carroll Wright, personally to me known to be the identical persons who signed the foregoing articles of incorporation as incorporators, and acknowledged the execution of said instrument to be their free and voluntary act and deed, for the uses and purposes therein set forth.

In witness whereof I have hereunto set my hand and notarial seal the day and year last above written.

(Notarial Seal)

JAS. P. HEWITT,
Notary Public Polk County, Iowa.

Filed for record Nov. 19th A. D. 1889 at 1:55 o'clock P. M.

GEO. C. SIMS,
Recorder.

EXHIBIT 54.

Solon Humphreys and J. T. Granger
to
Des Moines and Northern Railway Co.
Deed.

Know all Men by these Presents:

That we, Solon Humphreys and Ellen Humphreys, his wife, and J. T. Granger and Carra H. Granger, his wife, of the City, County, and State of New York, for a consideration named in a certain agreement between said Solon Humphreys and J. T. Granger and the Des Moines and Northern Railway Company of even date herewith, do hereby sell and convey unto the Des Moines and Northern Railway Company, a corporation organized and existing under the laws of the State of Iowa, the following described rights and property, to-wit: The line of railway and franchises (except the franchise to be a corporation) formerly belonging to the St. Louis Des Moines & Northern Railway Company, extending from Farnham Street in the City of Des Moines, County of Polk and State of Iowa, through the town of Clive and the counties of Polk, Dallas and Boone to the city of Boone in said last named county, State of Iowa, together with all its real estate necessary for and used in the operation of said road, its right of way, embankments, bridges, turnouts, side

tracks, buildings and structures, water tanks, and fixtures, shops, engine and other houses, depots, turn tables, engines, cars, machinery, tools and all the railroad property formerly belonging to said St. Louis, Des Moines & Northern Railway Company, whether acquired at the time the mortgages mentioned in said agreement were executed, or thereafter, and also all its tolls and earnings and all its interest in the stock of the Des Moines Union Railway Company (it being understood that the road between Farnham Street and Clive aforesaid is sold subject to a deed heretofore executed by the St. Louis Des Moines & Northern Railway Company to the Des Moines & Northwestern Railway Company, dated January 3rd, 1882), and also all their interest, whether as owner of, or holders of a mechanic's lien upon certain betterments made and equipments supplied in widening the gauge of said railway under a contract with said St. Louis Des Moines & Northern Railway Company, dated the 17th day of October 1889. And the said Solon Humphreys and J. T. Granger covenant and agree that said property is free and clear of all liens and incumbrances and that they have good title thereto.

In Witness whereof the said Solon Humphreys and J. T. Granger hereunto set their hands this 23rd day of November 1889. And the said Ellen Humphreys wife of Solon Humphreys, and the said Carra H. Granger, wife of J. T. Granger, hereby relinquish their right of dower in and to the premises hereby conveyed.

OLON HUMPHREYS,
ELLEN HUMPHREYS,
J. T. GRANGER,

By Solon Humphreys, Atty. in fact &
CARRA H. GRANGER.

State of Iowa,

Polk County—ss.

Be it remembered that on this 23rd day of November, 1889, before me, a notary public, in and for said county and state, personally came Solon Humphreys, personally known to me to be one of the identical persons who signed the above instrument as grantor and acknowledged the execution thereof to be his voluntary act and deed, for the uses and purposes therein set forth.

Witness my hand and notarial seal this 23rd day of November, 1889.

(Notarial Seal)

JAS. P. HEWITT,
Notary Public Polk County, Iowa.

State of Iowa,
Polk County—ss.

Be it remembered that on the 23rd day of November 1889, before me, a Notary Public in and for the County of Polk, and State of Iowa, personally came Solon Humphreys, personally known to me [to me] to be the identical person whose name is subscribed to the foregoing instrument as Attorney in fact for J. T. Granger, one of the grantors named therein, and acknowledged the execution of said instrument to be the voluntary act and deed of the said J. T. Granger, said grantor, by the said Solon Humphreys, his attorney thereunto appointed, all for the uses and purposes in said instrument expressed.

In Witness Whereof, I have hereunto set my hand and Notarial Seal the day and year last above written.

(Notarial Seal) JAS. P. HEWITT,
Notary Public, Polk County, Iowa.

State of New Jersey,
County of Passaic—ss.

Be it remembered that on this fifth day of December 1889, before me a Notary Public, in and for said County, and State, personally appeared Carra H. Granger, wife of J. T. Granger, to me personally known to be the identical person who signed the foregoing instrument as one of the grantors, and acknowledged the execution thereof to be her free and voluntary act and deed for the uses and purposes therein expressed.

THOS. M. MOORE,
Notary Public, Passaic N. J.

Witness my hand and Notarial Seal the day and year last above written.

(Notarial Seal) THOS. M. MOORE,
Notary Public, Passaic N. J.

State of New York,
County of New York—ss.

Be it remembered that on this Seventh day of December, 1889, before me a Notary Public, in and for said County and State, personally appeared Ellen Humphreys, wife of Solon Humphreys to me personally known to be the identical person who signed the foregoing instrument as one of the grantors, and acknowledged the execution thereof to be her free and voluntary act and deed for the uses and purposes therein expressed.

WM. HEARTS,
Notary Public, N. Y. City.

Witness my hand and Notarial Seal the day and year last above written.

(Notarial Seal)

WM. HEARTS,
Notary Public, for this City & County of
New York.

Filed for Record, Dec. 23rd A. D. 1889. At 11:2 o'clock A. M.
Geo. C. Sims, Recorder.

Exhibit 55.

Proceedings of the Board of Directors of the St. Louis, Des Moines & Northern Railway Company, as follows:

"Board meeting January 23, 1882. The board met this day pursuant to adjournment. A quorum being present the minutes of the preceding meeting were read and approved.

"On motion of J. S. Runnells it was resolved and carried that the president and secretary of this company execute in behalf of this Company a conveyance to the Des Moines Northwestern Railway Company of all its right, title and interest in and to its branch road from Clive to Waukee, and one-half of its road from the station of Clive to Farnham street in the city of Des Moines, Iowa, and an agreement with said railway company with reference to the operation and management of the joint road and the final division of the same, etc., (a copy of which, dated January 3, 1882, with the approval of the Wabash, St. Louis & Pacific Railway Company) endorsed thereon is filed with the secretary of this company); and that the same be delivered to G. M. Dodge for delivery to the Des Moines Northwestern Railway Company when the same shall be paid for by it."

Exhibit 56.

Board Meeting of the Des Moines Northwestern Railway Company as follows:

"Board meeting January 23rd, 1882. The board met pursuant to adjournment. A quorum being present, minutes of the proceeding were read and approved.

"John S. Runnells presented an agreement for the purchase from the St. Louis, Des Moines & Northern Railway Company of its road from Waukee to Clive, and one-half of its road from Clive to Farnham street in Des Moines; also an agreement for the use of the joint road, a copy of which is presented and filed with the secretary of the same being dated January

3rd, 1882, and reported that the amount of consideration for the purchase was to be settled and agreed upon as soon as the cost of construction could be ascertained. The same was upon motion ratified and agreed to by the board, and the president and secretary of this company directed to execute the same on behalf of the company. On motion the board adjourned until February 8th, 1882, to take action with reference to the contract with the Des Moines & St. Louis, St. Louis, Des Moines & Northern and others for terminal facilities in Des Moines, and for such other business as may come before the board. J. S. Polk, President, J. S. Runnells, Secretary."

EXHIBIT 57.

Land Deed Record 207—Page 167.

St. Louis Des Moines & Northern Railway with Des Moines
Northwestern Railway Company.

Contract.

Whereas, the Saint Louis, Des Moines and Northern Railway Company have and are constructing a railway from Farnham Street, Des Moines, Iowa, in a northwesterly direction, through Boone County, Iowa, and has built a branch thereof from Clive, a station on said road in Polk County, Iowa to a junction with the Des Moines Northwestern Railway at or near Waukee, Dallas County, Iowa; and Whereas, the Des Moines Northwestern Railway Company desires to purchase of the Saint Louis, Des Moines and Northern Railway Company the branch of its said road from Waukee to Clive, and one half of its road from Clive to Farnham Street in the City of Des Moines including right of way road-bed, side tracks and switches, to the end that it, the Des Moines Northwestern Railway Company shall have an independent and continuous line of road from the City of Des Moines to Waukee;

Now, Therefore, In consideration of the premises, and of the sum of One Dollar, and of sundry other considerations paid to it by the Des Moines Northwestern Railway Company, the Saint Louis Des Moines and Northern Railway does hereby grant, bargain, sell and convey unto the Des Moines Northwestern Railway Company, all its right, title and interest in and to its branch-road aforesaid from Clive to Waukee, including right of way, roadbed and all rights and franchises, property pertaining thereto, and also one-half of its railway from the station of Clive aforesaid to Farnham Street in the City of Des Moines, including right of way, road-bed, side-tracks, switches and other property necessary to the use and operation of the same, with the joint and equal right to the Des Moines Northwestern Railway Company to enjoy,

use and operate said road from Clive to Des Moines and run its cars thereon. This grant is upon the following conditions, to-wit:

1st. That the railway from Clive to Des Moines shall be maintained and kept up at the joint expense of the parties hereto each contributing thereto in proportion to the amount of business passing over the same from said roads respectively.

2nd. That said joint roads from Clive to Des Moines shall be maintained and operated under the supervision of the superintendent of the said St. Louis, Des Moines & Northern Railway Company, and all trains passing over the same shall be subject to reasonable orders and police regulations of said superintendent of the said St. Louis, Des Moines & Northern Rwy Company.

3rd. That the parties to this contract and their assigns shall have the joint and equal right to run their trains over said joint road, subject, however, to the rules and regulations provided for in the foregoing clause, and each party to this contract shall have an equal right to receive, and do business arising on said joint road and charge for the same such rate as the parties hereto may from time to time agree upon.

4th. That if the business of said companies or their assigns shall require the construction of a second track from Clive to Des Moines it shall be constructed by said roads jointly, each paying half the expense thereof and each being entitled to the use of the same in common and such additional track shall be maintained and operated in the same manner and subject to the same rules and regulations as the original track.

5th. It is further stipulated and agreed that if either of said companies or their assigns shall find it inconvenient or impracticable to operate said road from Clive to Des Moines jointly with the other company, it may build a second track from Clive to Des Moines on such joint right of way. If the Des Moines Northwestern Railway Company shall elect to build such second track it shall build it on the south half of such right of way as near as may be, and if the original track or any part thereof, shall be located on such south half of said right of way, the same shall be moved over to the north half thereof. If such election to build such second track shall be made by the Saint Louis, Des Moines and Northern Railway, then, it shall build such second track on the north half of said right of way and the original track shall be moved by the Des Moines Northwestern to the south half of said right of way. The expense of building such second track and the removal of the original track as above provided for, shall

be apportioned equitably between said parties, and if they cannot agree upon the same, the matter of difference shall be submitted to arbitration, as hereinafter provided. When such second track shall be built and the original track removed, as above provided, the right of way and property shall be divided between the parties hereto, and south half of such right of way shall be and become the sole and absolute property of the Des Moines Northwestern Railway Company, and the north half of said right of way and property shall be and become the sole and absolute property of the Saint Louis, Des Moines and Northern Railway Company. And each party shall thereafter hold, use and enjoy said property in severalty.

6th. That in case of the building of a second track at the election of either party to the contract, all stations, switches water-tanks, station-houses, cattle-guards and other like property built or constructed by the parties hereto jointly on said joint right of way shall be appraised and the company on whose half of the right of way the same shall be situated shall pay the other company one-half of such appraised value and shall become owner thereof in severalty.

7th. It is further stipulated and agreed that either party to this contract may mortgage, sell or lease the interest it may acquire in and to said joint road and property under and by virtue of this contract, and the party acquiring title thereto or possession thereof under the provisions of such mortgage, sale or lease shall be entitled to all the rights of the party under which he or they may claim title.

8th. It is further stipulated and agreed that all disagreements under this contract shall be submitted to the arbitration of three disinterested persons, one of whom shall be selected by each party to this contract and the other by the two thus selected, and their award in writing shall be final between said parties.

In Witness Whereof, the said parties hereto have caused these presents to be executed by their respective presidents under their respective corporate seals, attested by the secretaries of the said companies the twenty-third day of January, A. D. 1882.

THE ST. LOUIS, DES MOINES & NORTH-
ERN RAILWAY CO.

(St. L. D. M. & N. Ry.)
(Co. Seal)

By J. S. Clarkson, President.

Attest: J. S. Polk, Sec.

THE DES MOINES NORTHWESTERN
RAILWAY COMPANY,

(D. M. N. W. R. R.)
(Co. Seal)

By J. S. Polk, Pres.

Attest: J. S. Runnells, Secretary.

The Wabash Saint Louis and Pacific Railway Company hereby consents to the execution of the within contract by the Des Moines Northwestern Railway Company.

THE WABASH, ST. LOUIS AND PACIFIC
RAILWAY COMPANY,

(W. St. L. & P. Ry.)
(Co. Seal)

By John Humphrey.

Attest: O. D. Ashley, 2nd Sec.

State of Iowa,

County of Polk—ss.

Be it remembered that on this 22nd day of January 1882, personally came before me the undersigned, a notary public within & for the county aforesaid, J. S. Clarkson, who being by me duly sworn, doth depose & say that he is the President of the St. Louis, Des Moines & Northern Railway Company, grantor in the foregoing instrument, that the name of said Company is signed to said instrument by him as president of said Company by virtue of the order of the Board of Directors, that the seal of the company attached thereto is the proper & genuine seal of said company & is affixed by order of said Board of Directors and the said J. S. Clarkson, President acknowledged the foregoing instrument to be the voluntary act and deed of the St. Louis, Des Moines & Northern Railway Company for the uses & purposes therein expressed.

In Witness Whereof, I have hereunto set my hand and affixed my notarial seal the 22nd day of January 1882.

(Notarial Seal)

C. HUTTENLOCHER,

Notary Public.

State of Iowa,

Polk County—ss.

Be it remembered that on this 22nd day of January 1882, personally came before me the undersigned, a notary public within & for the county aforesaid, J. S. Polk, who being by me duly sworn doth depose & say that he is the secretary of the St. Louis Des Moines & Northern Railway Company, grantor in the foregoing instrument, that he countersigned the said

instrument & affixed the seal of said company thereto by order of the Board of Directors thereof.

In witness whereof, I have hereunto set my hand & affixed my notarial seal of office this 22nd day of January 1882.

(Notarial Seal)

C. HUTTENLOCHER,
Notary Public.

State of Iowa,

Polk County—ss.

Be it remembered that on this 22nd day of January 1882, personally came before me the undersigned, a notary public within & for the county aforesaid, J. S. Polk, who being by me duly sworn, doth depose & say that he is president of the Des Moines Northwestern Railway Company, grantee in the foregoing instrument, that the name of said company is signed to said instrument by him as president of said company by virtue of the order of the board of directors, that the seal of the company attached thereto is the proper & genuine seal of said company & is affixed thereto by order of said board of directors. And the said J. S. Polk as president acknowledged the foregoing instrument to be the voluntary act & deed of the Des Moines Northwestern Railway Company for the uses & purposes therein expressed.

In witness whereof, I have hereunto set my hand & affixed my notarial seal this 22nd day of Janry 1882.

(Notarial Seal)

C. HUTTENLOCHER,
Notary Public.

State of Iowa,

Polk County—ss.

Be it remembered that on this 22nd day of January 1882, personally came before me the undersigned, a notary public within & for the county aforesaid, J. S. Runnells, who being by me duly sworn, doth depose & say that he is the secretary of the Des Moines Northwestern Railway Company, grantee in the foregoing instrument & affixed the seal of said company thereto by order of the board of directors thereof.

In witness whereof, I have hereunto set my hand & affixed my notarial seal of office this 22nd day of Janry 1882.

(Notarial Seal)

C. HUTTENLOCHER,
Notary Public.

Filed for record Sep. 7th, A. D. 1889, at 10:15 o'clock A. M.

GEO. C. SIMS, Recorder.

State of Iowa,
Polk County—ss.

I, Mrs. Frank W. Dodson, Recorder of said County, hereby certify that the foregoing writing is a copy from the original record in my office, and the whole thereof, and recorded in Book 207 page 167 &c.

Dated at Des Moines, Iowa, in said County, this 10 day of December 1909.

MRS. FRANK W. DODSON, Recorder.

EXHIBIT 58.

The Des Moines Northwestern Railway Co.
to
The Central Trust Co. & James Cheney, Trustee.
Mortgage.

This indenture, made and entered into this twenty-eighth day of February, A. D. 1881, by and between the Des Moines Northwestern Railway Company, party of the first part, and the Central Trust Company of New York, and James Cheney of Indiana, as Trustees, joint parties of the second part—Witnesseth:

Whereas by the terms of a contract made and entered into on the eighth day of December, A. D. 1880, by and between the Des Moines Northwestern Railway Company, of the first part, and the Narrow Gauge Railway Construction Company of the second part, and the Wabash Saint Louis and Pacific Railway Company of the third part, reference thereto being hereby made, it is, among other things mutually provided and agreed that the railroad of the said Des Moines Northwestern Railway Company shall under and in pursuance of said agreement and subject to the limitations thereof, and of a contract of the same date entered into by and between the Wabash, Saint Louis and Pacific Railway Company and the Narrow Gauge Railway Construction Company be extended northwesterly from Panora, Guthrie County, Iowa, the present terminus of its completed road to Sioux City, and Spirit Lake, or in that vicinity and from Waukee, its present southern terminus, to the city of Des Moines, Iowa. And whereas, in and by said agreement it is further provided that bonds of the Wabash Saint Louis and Pacific Railway Company, or the series secured by the general mortgage of that company dated the first day of June, A. D. 1880, may be issued and used in pursuance of said agreements to the amount of seven thousand dollars per mile of the railroad of said Des Moines Northwestern Railway Company now complete and to the further amount of seven

thousand dollars per mile for each mile of said railway which may be hereafter completed under said agreement north-westerly from Panora and to the further sum of seven thousand dollars per mile of said extension from Waukeo to the city of Des Moines or so much more as may be necessary to complete such last named extension. And, whereas, in and by said agreement, it is further provided, that the said Des Moines Northwestern Railway Company shall secure the Bonds of said Wabash Saint Louis and Pacific Railway Company issued under its general mortgage above referred to by a first mortgage upon its railroad and other property to the extent of seven thousand dollars for each mile of its said railroad now complete and to the further extent of seven thousand dollars for each mile of said railroad as the same may be extended northwesterly from Panora aforesaid, and to the further sum of seven thousand dollars per mile of said extension from Waukeo to the city of Des Moines and so much more as may be necessary to complete said last named extension. And whereas, the said Wabash Saint Louis and Pacific Railway Company is about to issue in pursuance of said agreements certain of its bonds secured by its said general mortgage. Now Therefore, in consideration of the foregoing, and to further secure the holders of the bonds issued under the provisions of said general mortgage made as aforesaid by the said Wabash Saint Louis and Pacific Railway Company to the extent only of so many of said bonds as may be actually issued to the party of the first part under said contract of December eighth, A. D. 1880, the Des Moines Northwestern Railway Company by this indenture, doth grant, bargain, sell, convey and transfer, unto the said Central Trust Company of New York, and James Cheney of Indiana, as Trustees, and to their successors in trust, all its real estate necessary for and used in the operation of said road, its right of way, embankments, bridges, turn-outs, side-tracks, buildings and structures, water tanks and fixtures, shops, engine and other houses, depots, turn tables, engines, cars, machinery, tools, and all its railroad property acquired and to be acquired, and everything appurtenant thereto, or used in connection therewith, together with all rents, issues tolls and earnings accruing to said party of the first part, provided that if as to any lots or lands parcel of said real estate and not within the actual right of way of said railroad (the same being one hundred feet in width except where narrowed by a street) the president for the time being of the Wabash Saint Louis and Pacific Railway Company shall unite with the first party hereto in a conveyance of the same then such conveyance shall be taken as conclusive evidence that said lots or lands are not necessary for or used in the operation of said railroad. And the Des Moines Northwestern Railway Company covenants

and agrees to and with the trustees named in said general mortgage executed by the Wabash Saint Louis and Pacific Railway Company and their successors in said trust, that all its railroad and property above described shall be charged with the lien of said general mortgage and subject to its provisions, except as hereinafter mentioned, to the extent and amount of seven thousand dollars for each mile of its railroad now constructed or to be constructed as herein provided for, and to such further extent as said bonds may be beyond seven thousand dollars per mile used in the construction of said railroad from Waukee to Des Moines as provided for in said contract of December eighth, A. D. 1880. Provided, however, that if the party of the first part shall well and truly pay or cause to be paid to the parties of the second part an amount equal to the interest on said bonds so advanced to it under said contract of December eighth, A. D. 1880, according to the tenor and effect of said bonds, and an amount equal to the principal of said bonds at the date of the maturity thereof, then this obligation shall be null and void and no foreclosure of this mortgage shall take place or be had even though in the meantime the general mortgage herein referred to may be foreclosed on other railroads and property covered by it.

In witness whereof, the said Des Moines Northwestern Railway Company, has caused this instrument to be signed in its corporate name by J. S. Polk, its president, and attested by John S. Runnells, its secretary, with the corporate seal of the company hereto as authorized and directed by its board of directors the day and year first above written.

(Company seal)

DES MOINES & NORTHWESTERN
RAILWAY CO.,

By J. S. Polk, President.

Attest:

John S. Runnells, Secretary.

State of Iowa,

County of Polk—ss.

Be it remembered that on this 18 day of April, 1881, personally came before me the undersigned, a notary public within and for the county aforesaid, J. S. Polk, who being by me duly sworn did depose and say that he is the president of the Des Moines Northwestern Railway Company in the foregoing instrument mentioned; that the name of said company is signed to said instrument by him as president of said company by virtue of the order of the board of directors; that the seal of the company attached thereto is the proper and genuine seal of said company and is affixed thereto by order of said board of directors. And the said J. S. Polk, as president, acknowl-

edged the foregoing instrument to be the act and deed of the Des Moines Northwestern Railway Company, for the uses and purposes therein expressed.

In witness whereof, I have hereunto set my hand and affixed my notarial seal of office this 18 day of Apr., 1881.

(Notarial Seal)

C. HUTTENLOCHER,
Notary Public.

State of Iowa,

County of Polk—ss.

Be it remembered that on this 18 day of April, 1881, personally came before me, the undersigned, a notary public within and for the county aforesaid, John S. Runnells, who being by me duly sworn, did depose and say that he is the secretary of the Des Moines Northwestern Railway Company in the foregoing instrument mentioned: That he countersigned the said instrument and affixed the seal of said company thereto by order of the board of directors thereof.

In witness whereof, I have hereunto set my hand and affixed my notarial seal of office this 18th day of April 1881.

(Notarial seal)

C. HUTTENLOCHER,
Notary Public.

Filed November 12th A. D. 1883 at 3:20 o'clock P. M.

J. J. PAYNE,
Recorder.

State of Iowa,

Polk County—ss.

I, Mrs. Frank W. Dodson, Recorder of said County, hereby certify that the foregoing writing is a copy from the original record in my office, and the whole thereof, and recorded in Book 121 page 618 to 621, inclusive.

Dated at Des Moines, Iowa, in said County, this 10 day of December 1909.

MRS. FRANK W. DODSON,
Recorder.

EXHIBIT 59.

United States Circuit Court Southern District of Iowa, Central Division.

October Term 1887.

Friday November 11, 1887.

The Central Trust Company of New York and James Cheney,
Trustees,

No. 2186. vs. Eq.

The Des Moines Northwestern Railway Company, the Wabash
St. Louis & Pacific Railway Company, Solon Humphreys and Thomas E. Tutt, Receivers of the Wabash,
St. Louis & Pacific Railway Company, and the St.
Louis, Iron Mountain & Southern Railway Company.

Decree.

Now on this day, come the following parties, by their solicitors, to-wit: The Central Trust Company of New York and James Cheney, complainants, and the Wabash St. Louis & Pacific Railway Company and the Des Moines Northwestern Railway Company; And it appearing to the court that all the parties defendant above named have been served with process or have entered their appearance herein; and it appearing to the court that the St. Louis Iron Mountain & Southern Railway Company, defendant herein has been duly served with process herein and has in default of an appearance, answer and demurrer for more than a month before the rendition of this decree, the bill of Central Trust Company of New York, and James Cheney, trustees, is taken as confessed against it, and this cause coming on to be heard upon the bill of the Central Trust Company of New York and James Cheney, trustees, filed December 4, 1886, the answer to the Wabash St. Louis & Pacific Railway Company filed February 7th 1887: The answer of Solon Humphreys and Thomas E. Tutt, receivers of the Wabash St. Louis & Pacific Railway Company, filed February 7th, 1887: The answer and the cross-bill of the Des Moines Northwestern Railway Company, both filed February 7th, 1887: together with all other answers appearing of record and all replications and exhibits, the court with consent of all the parties present in court finds and adjudge that on the 28th day of February A. D. 1881, the Des Moines Northwestern Railway Company was a body corporate under the laws of the State of Iowa, and that such Company then owned a certain line of railroad known as the Des Moines Northwestern Railway with all the property real and personal, appertaining thereto, and all franchises thereof. That on said 28th day of February 1881, the said Des Moines & Northwestern Railway Company for the purpose of securing the holders of the bonds issued under the provisions of the general mortgage made by the Wabash St. Louis & Pacific Railway Company under date of June 1st A. D. 1880, and issued by said Wabash St. Louis & Pacific Railway Company to the amount of seven thousand dollars per mile for the line of railway of the Des Moines Northwestern

Railway actually completed, and the further sum of seven thousand dollars per mile and as much more as might be necessary to complete the extension from Waukee to the City of Des Moines and the sum of seven thousand dollars per mile issued for the extension of said railway northwesterly from Panora, duly executed and delivered to the complainants herein, the Central Trust Company of New York and James Cheney of Indiana, as trustees, its mortgage or deed of trust, and thereby conveyed to said trustees for the purposes in said mortgage fully set forth, all the real estate necessary for and used in the operation of said road, its right of way, embankments, bridges, turn outs, side tracks, buildings and structures, water tanks and fixtures, shops, engine and other houses, depot grounds, turn tables, engines, cars, machinery, tools, and all its railroad property acquired and to be acquired, and everything appurtenant thereto, or used in connection therewith, together with all rents, issues, tolls and earnings, accruing to said party of the first part, being a line of railway extending from Farnham Street, Des Moines, Iowa, through the counties of Polk, Dallas, Guthrie, Greene, Calhoun, Pocahontas, Buena Vista, Clay and Dickenson, in said State, and the counties of Polk, Dallas, Guthrie, Calhoun, Pocahontas, also right of way, depot grounds and other property appurtenant thereto.

The court further finds and adjudges that the lien of said mortgage attached to the said lines of railway and property appurtenant thereto, hereinbefore described, and is now in full force and effect thereon. The court further finds and adjudges that said mortgage was duly recorded as required by law; and for all the provisions thereof, and for the terms and conditions of the bonds secured thereby, reference is hereby made to a true copy of said mortgage filed by said Central Trust Company of New York with its bill filed in this cause and marked Exhibit "C". The court further finds and adjudges that of the mortgage bonds attaching as a lien upon the said railways hereinbefore described as aforesaid, there were in fact issued and sold for value and are now outstanding and unpaid a number thereof, the principal of which amounts to eight hundred and five thousand (\$8005.00) Dollars, with interest thereon, and upon coupons attached thereto, the further sum of three hundred and eighty-one thousand, seven hundred and five (\$381,705.00) Dollars, up to the time of entering this decree.

The court further finds that the Wabash St. Louis & Pacific Railway Company and the Des Moines Northwestern Railway Company made default on the first day of June 1884, in the payment of all the interest which became due on said bonds

on said day, and that such default has continued ever since that time, that said Companies have also made default in the payment of all installments of interest maturing on said bonds since the said first day of June 1884, and that such defaults have continued ever since.

The court further finds that demand was duly made by the holders of a large number of said bonds and coupons at the office of said Des Moines Northwestern Railway Company, and said Wabash St. Louis & Pacific Railway Company in the City of New York for the payment of the interest maturing thereon on the first day of June A. D. 1884, said demand being made on or after said date and payment was then and there refused. The court further finds that the principal sum specified in the mortgage bonds aforesaid as well as the interest thereon have now become due and payable according to the terms and conditions of said instrument.

The court being fully advised in the premises, does hereby adjudge and decree that within ten days from this date, the Des Moines Northwestern Railway Company, or some person or persons for it, shall pay to the Trustees of said mortgage the full sum of money found due as principal and interest, as aforesaid, on said bonds and coupons, together with interest from this date, at the rate of six per cent per annum, and all costs of this suit; that in default thereof the said mortgage be foreclosed and all the property rights and interests aforesaid conveyed thereby or upon which the mortgage is a lien as hereinbefore decreed, be sold. It is ordered that the sale of said property, rights and interests be without redemption, and said sale when made, and confirmed by the court, and all the conditions thereof fully performed, shall forever bar and foreclose all right, title and equity of redemption of said Des Moines Northwestern Railway Company in said railway, railroad property, interest and franchises, and each part thereof; and also all the rights, and interests of all persons claiming through or under said Company, and also all the right of redemption and all other rights and interests of all the parties to this cause, and also all the rights and interests of all other parties claiming through or under said Des Moines Northwestern Railway Company, save as herein excepted, it being expressly decreed that such sale is made subject to the laws rights and equities of all parties not made defendants hereto, who are now, or shall at the date of such sale be legally or equitably entitled to a lien upon said mortgaged property or any part thereof, or be entitled to subject said mortgage property or the proceeds thereof to the payment of their claims, before the application thereof to the payment of the mortgage debt, and this court expressly reserves full jurisdiction of this

cause, of the parties hereto, and over the property decreed to be sold, so far as may be necessary to fully protect the rights and equities herein named.

The court further orders and decrees that the property aforesaid be sold at public auction to the highest bidder or bidders at the front door of the United States Court House in the City of Des Moines, in the State of Iowa, between the hours of 10:00 A. M. and 4:00 P. M. on such day as the commissioner hereinafter named shall appoint. Due notice of the time, place and terms of said sale shall be given by publication at least once a week for four weeks before said sale, in one public newspaper in the city of Des Moines, Iowa. It is ordered that before any bid for any property sold under this decree shall be accepted by the Commissioner, executing this decree, he shall require the person or persons making such bid to deposit with him or subject to his order in some bank to be by the Commissioner selected, the sum of One Thousand Dollars.

As soon as the said sale shall have been made by the Commissioner in pursuance of this decree, he shall report the same to this court for confirmation, further certifying to the court the compliance of the purchaser or purchasers with the conditions hereinbefore prescribed. If any such bid shall be accepted by the court and the party making the same shall fail to comply with all the conditions of sale and all orders of the court made or to be made with respect thereto, then the sum so deposited shall be forfeited [and shall be forfeited] and shall be applied to the expenses of re-sale, or the cost of this cause, or the payment of the bonds aforesaid, as the court shall order. If any bid shall be rejected by the court, the deposit made by the bidder shall be returned. If any bid shall be accepted and confirmed by the court and all the conditions of sale shall be fully complied with, the Commissioner shall execute to such purchaser or purchasers, deeds of conveyance and transfer of all the property and interests referred to in this decree.

It is further ordered and decreed that after the purchaser or purchasers shall have made the cash payment hereinbefore described, said purchaser or purchasers shall have the right to discharge the remainder of their bid by the use of the bonds aforesaid. The Commissioner executing this decree shall apply the proceeds derived from said sale in the manner following: 1st. To the payment of all the costs of this cause, including all expenses of making the sale and otherwise enforcing and carrying out this decree. 2nd. To the payment of the bonds aforesaid as far as the same can be paid in whole or in part, out of the proceeds of said sale, or by the application of the bonds aforesaid in lieu of purchase money under the provisions of this decree relating thereto.

George F. Henry is hereby appointed Commissioner to execute this decree of sale and he is ordered to make full report of his doings to this court.

(Signed) J. M. LOVE, Judge.

Endorsed: Filed Nov. 11, 1887. Ed. R. Mason, Clerk.

EXHIBIT 60.

United States Circuit Court, District of Iowa.

The Central Trust Company, et al.

vs.

Des Moines, Northwestern Railway Company, et al.

Now on this 2ad day of June A. D. 1888, this cause came on to be heard on the Supplemental Report of George F. Henry, Commissioner, filed in this cause on the 28th day of May A. D. 1888, on consent of complainants and the respondents, Wabash, St. Louis & Pacific Railway Company and Thomas E. Tutt and Solon Humphries, Receivers, and the Court having examined the same, and being now fully advised, it is ordered, and adjudged that such report be, and the same is approved, and confirmed, and the deed heretofore made by said Commissioner, to Jefferson S. Polk, and F. M. Hubbell, in pursuance of the sale heretofore made, under the decree in this cause, and which deed is in words and figures following, to-wit:

"This Indenture made the 19th day of May in the year of our Lord, 1888, between George F. Henry, Commissioner of the United States Circuit Court, within, and for the Southern District of Iowa, dwelling in the city of Des Moines, in said District, of the first part, and Polk & Hubbell, a firm composed of Jefferson S. Polk, and F. M. Hubbell, of the second part,

Witnesseth:

Whereas at a term of the United States Circuit Court for the Southern District of Iowa, begun, and held at the City of Des Moines in said District on the 11th day of November 1887, it was among other things ordered, adjudged and decreed by said Court in a certain cause then pending in said Court, between the Central Trust Company, of New York, and James Cheeney, Trustees, complainants, and the Des Moines Northwestern Railway Company, and others, defendants.

That the mortgaged premises mentioned, and set forth in Complainant's Bill, and the decree of said Court, and hereinafter particularly described be sold by or under the direc-

tion of George F. Henry, a Commissioner of said Court, the said Commissioner first giving such notice of the time and place of such sale, as is required by the Statutes of Iowa, for sales on execution.

And Whereas, the said George F. Henry, Commissioner, aforesaid and the party of the first part to these presents, in pursuance of the said order, and decree of said Court, did, on the 21st day of December 1887, sell at Public Auction, at the front door of the United States Court House, at Des Moines in said Southern District of Iowa, the said mortgaged premises hereinafter particularly described, having first given due notice of the time and place of such sale, as required by the said order and decree of said Court, at which sale the said mortgaged premises, hereinafter particularly described, were struck off to Polk & Hubbell, for the sum of One Million, One Hundred and Ninety-five Thousand and Six and 20/100 Dollars, that being the highest sum bidden for the same; and Whereas, said bid has been accepted, and confirmed, by the court, and all the conditions of the sale having been complied with, said sale being by the terms of the decree made without redemption;

Now Therefore, this Indenture witnesseth, that George F. Henry Commissioner, as aforesaid, and the party of the first part to these presents, in order to carry into effect the said sale so made as aforesaid, in pursuance of the said decree of the said Court, and in consideration of the said sum of One Million One Hundred and Ninety-five Thousand, and six and 20/100 Dollars, paid at the time of the execution of this deed, hath granted, bargained, and sold, aliened, released, conveyed, and confirmed, and by these presents doth grant, bargain, and sell, alien, release, convey, and confirm unto the said parties of the second part and to their heirs and assigns forever, all the right, title, interest, estate and property of said Des Moines Northwestern Railway Company, as well as the interest of all persons claiming by, through or under it, since the date of the mortgage, to-wit: February 28th, 1881, in and to the following described premises to-wit: All the real estate necessary for, and used in the operation of the said Des Moines Northwestern Railway, its right of way, depot grounds, embankments, bridges, turn-outs, sidetracks, buildings and structures, water tanks, and fixtures, shops, engine and other houses, depots, turn tables, engines, cars, machinery, tools and all its railroad property and appurtenances, being a line of railway extending from Farnham Street, Des Moines, Iowa, through the counties of Polk, Dallas, Guthrie, Greene, Calhoun, Pocahontas, Buena Vista, Clay and Dickinson, in said State, together with all and singular the rights, members,

privileges, hereditaments and appurtenances to the same belonging or in any wise appertaining. To have and to hold all and singular the said premises, above mentioned, and described, and hereby granted, and conveyed or intended so to be, with the appurtenances unto the said parties of the second part, their heirs and assigns forever.

In Witness Whereof the said Geo. F. Henry hath hereunto set his hand the day and year first above written.

GEO. F. HENRY,
Commissioner of U. S. Circuit Court for Southern District of Iowa.

State of Iowa,
County of Polk—ss.

On this 19th day of May 1888, before me, W. G. Harvison, a Notary Public, in and for Polk County, Iowa, personally appeared Geo. F. Henry, Commissioner of the United States Circuit Court for the Southern District of Iowa, who is personally known to me to be the identical person who signed the foregoing deed as grantor, and acknowledged the same to be his voluntary act, and deed, for the purposes therein specified.

Witness My Hand and seal the day and year above written.

(Seal)

W. G. HARVISON,
Notary Public in and for Polk County, Iowa."

be and the same is hereby approved, and the said Commissioner is directed to deliver the same to said purchasers, Jefferson S. Polk and F. M. Hubbell.

(Sgd) J. M. LOVE, Judge.

Endorsed: Filed Jun. 2, 1888. Ed. R. Mason, Clerk.

EXHIBIT 61.

Articles of Incorporation
of the

Des Moines and Northwestern Railway Company.

Know all Men by these Presents, that Jefferson S. Polk, and F. M. Hubbell and C. F. Meek, do hereby associate themselves into a body corporate under the laws of Iowa, and adopt the following

Articles of Incorporation
of

Des Moines and Northwestern Railway Company.

Article 1.

The name and style of this corporation shall be the Des Moines and Northwestern Railway Company and its principal place of business shall be at Des Moines, Iowa.

Article 2.

The general nature of the business of the Corporation shall be the purchasing, owning, extending, constructing and operating of a railway from the City of Des Moines, Iowa, to the Northern line of the State of Iowa, including all necessary terminal facilities, in Des Moines, Iowa, with a branch to Sioux City, Iowa, and such other branches as may from time to time be determined upon by the Company. The power to lease the road at any stage of its acquisition, construction or extension is hereby expressly asserted, and claimed. This corporation shall further possess all the powers, rights and immunities, conferred by law upon corporations for pecuniary profit.

Article 3.

The capital stock of this Corporation shall be Four millions of Dollars, which shall be divided into shares of One hundred dollars each, all of which shall be liable to payment at such times, and in such manner as the Board of Directors may from time to time determine. The entire capital stock or any part thereof may at the discretion of the Board of Directors be issued, and used for the purpose of carrying out the objects of this incorporation, and may be paid for in work done, or material furnished, in the construction or extension of the road, or used in the purchase, or acquisition of such road or roads that may be required in establishing or extending said line of railway, or exchanged for the stock of the road or roads so acquired for that purpose.

Article 4.

Each share of stock shall be entitled to one vote at any meeting of the stockholders, upon presentation of a certificate therefor. Provided that no transferee shall be entitled to vote unless the certificate of stock so held by him shall have been duly transferred on the books of the Company at least sixty days before the meeting at which it is sought to be voted.

Article 5.

For the payment of debts or to aid in the purchase or construction of the railroad the Directors by a two thirds vote of the entire Board in favor thereof may issue preferred stock, drawing interest at the rate of not more than seven per cent per annum.

Article 6.

The affairs of the Company shall be managed by a Board of not less than five (5) or more than nine (9) Directors, who shall be elected annually by the stockholders on the first Thursday in January of each year. They shall have the power and are hereby invested therewith to take all steps necessary to acquire, purchase or construct and operate said railroad, and its branches, or to lease the same perpetuity, or otherwise, at any stage of its progress, upon such terms and conditions as they may deem advisable, if, in their judgment the purposes of this incorporation shall be better promoted thereby. They are hereby further authorized for the purpose of purchasing, building, extending and equipping its road, and otherwise carrying out the objects of this incorporation, to execute a mortgage upon the road, franchise and other property of this company to secure the bonds of the Company or other evidence of indebtedness, issued or approved by the Board all of which bonds or other evidence of indebtedness, and stock together with all subsidies, taxes, gifts and donations which may be obtained to aid in the construction of the road, they are empowered and directed to transfer to such corporation or individual as they may elect for the purpose of purchasing, building and extending of said line of railway. And they are hereby invested with all the other powers usually possessed by directors of similar corporations. A majority of the Board shall constitute a quorum; and in the event of a death or resignation of a member, the remaining members may fill the vacancy thus occurring. Provided that a two-thirds vote of the full board shall be necessary to fill vacancy. The Directors shall elect from their number a President, Vice President, Secretary and Treasurer. Meetings of the Board may be held at any time upon the call of the President, or in his absence, of the Vice President, or two members of the Executive Committee.

The following persons, to wit, G. M. Dodge, F. M. Hubbell, Jefferson S. Polk, C. F. Meek and Hoyt Sherman shall constitute the Board of Directors of this Company until the regular election in January 1888 or until their successors are duly elected.

Article 7.

The President, Vice President, Secretary and Treasurer, shall constitute an Executive Committee, who shall have power to make contracts binding on the corporation, and shall be trusted with the immediate management of its affairs. They shall be authorized to act for the Company in all matters affecting its interest when the Board is not in session and their under-

takings as such Committee shall be valid and binding to the same extent as would those of the full Board of Directors.

Article 8.

The private property of stockholders shall be exempt from liability for corporate debts and undertakings.

Article 9.

All contracts and certificates of stock shall be signed by the President, or in his absence by the Vice President, and countersigned by the Secretary.

Article 10.

The total amount of indebtedness to which the corporation may subject itself shall never exceed two-thirds of its capital stock, except as authorized under Chapter XXII Laws of the Twentieth General Assembly of the State of Iowa.

Article 11.

The articles may be amended at any meeting of the stockholders; ten days notice of such meeting having been given by publication in some newspaper at the principal place of business of the Company. Provided that a majority of all the stock subscribed and issued shall be voted in favor of such amendment.

Article 12.

This incorporation shall commence on the 3rd day of October 1887, and continue fifty (50) years with the right of renewal.

In Testimony Whereof, we have hereunto set our hands this 3rd day of October A. D. 1887.

JEFFERSON S. POLK,
FREDERICK M. HUBBELL,
C. F. MEEK.

State of Iowa,
Polk County—ss.

On this 3rd day of October 1887, before me the undersigned Notary Public in and for the County of Polk personally appeared Jefferson S. Polk and F. M. Hubbell and C. F. Meek, to me personally known to be the identical persons whose names are affixed to the foregoing instrument as incorporators, and acknowledged the execution of the same to be their voluntary act and deed for the purposes therein expressed.

(Notarial Seal)

CYRUS KIRK,
Notary Public Polk County, Iowa.

EXHIBIT 62.

Polk and Hubbell

to

Des Moines & Northwestern Railway Co.

Deed for Railway and Property.

Whereas, heretofore, to-wit, on the 21st day of December, A. D. 1887, Polk & Hubbell, a firm composed of Jefferson S. Polk and F. M. Hubbell, did purchase certain railway and property formerly belonging to the Des Moines Northwestern Railway Company, and hereinafter more particularly described, at a sale on said day made by George F. Henry, commissioner, acting under a decree rendered in the United States Circuit Court, in and for the Southern District of Iowa, Central Division, at the suit of the Central Trust Company et al, complainants, against the Des [—] Northwestern Railway Company, et al, defendants, and,

Whereas, they heretofore proposed to sell said property purchased at said sale to the Des Moines & Northwestern Railway Company, a corporation duly organized and existing under the laws of the State of Iowa, which proposition was duly accepted by said Company,

Now Therefore, for the purpose of carrying out such proposition, and in consideration of the premises, and the sum of One Dollar to them in hand paid, the said Jefferson S. Polk and F. M. Hubbell, who compose said firm of Polk & Hubbell, do bargain and sell, alien, release, convey and confirm unto the Des Moines & Northwestern Railway Company, and its assigns forever, all their right, title and interest, estate and property in and to the following described premises, to-wit:

A line of railway extending from Farnham Street in the city of Des Moines, Iowa, through the counties of Polk, Dallas, Guthrie, Greene, Calhoun, Pocahontas, Buena Vista, Clay and Dickinson, in the State of Iowa, together with all the real estate necessary for and used in the operation of said railway, its right of way, depot grounds, embankments, bridges, turn-outs, sidetracks, buildings and structures, water tanks, and fixtures, shops, engine and other houses, depots, turn tables and cars, machinery, tools and all other said railway property and appurtenances, together with all and singular the rights, privileges, hereditaments and appurtenances of the same belonging or in any wise appurtenant thereto.

And to Have and to Hold all and singular the premises above mentioned and described and hereby granted and conveyed, or intended so to be, with the appurtenances, unto the said party of the second part and its assigns forever.

The intention of these premises is to convey to said Des Moines & Northwestern Railway Company all the right, title and interest acquired by said Polk & Hubbell under and by virtue of a deed of George F. Henry, commissioner above mentioned, which deed bears date the 19th day of May, 1888. The said Polk & Hubbell make no warranty with reference to said property so conveyed, except as against any acts done or suffered by them; and inasmuch as it is intended that this conveyance shall be recorded simultaneously in the several counties of the state of Iowa wherein the railroad property above described, or some part thereof, is situated, the parties have executed six several counterparts hereof, each an original, and all constituting but one and the same conveyance.

Julia Polk, H., wife of Jefferson S. Polk, and Frances E. Hubbell, wife of F. M. Hubbell, hereby relinquish all their right of dower in and to the said premises so sold and conveyed.

In witness whereof, we have hereunto set our hands this 19th day of May, A. D. 1888.

JEFFERSON S. POLK,
JULIA H. POLK,
F. M. HUBBELL,
FRANCES E. HUBBELL.

State of Iowa,
Polk County—ss.

On this 19th day of May, A. D. 1888, before me Jno. S. Polk, the undersigned, a notary public within and for said county, personally came Jefferson S. Polk and Julia H. Polk, his wife, F. M. Hubbell and Frances E. Hubbell, his wife, personally to me known to be the identical persons whose names are affixed to the above instrument as grantors and severally acknowledged the execution of the same to be their voluntary act and deed for the purposes therein expressed.

Witness my hand and official seal on the day and date last above written.

(Notarial Seal)

JNO. S. POLK,
Notary Public, Polk County, Iowa.

Filed for record June 2, 1888, at 4:35 o'clock P. M.

D. C. BISHARD, Recorder.

State of Iowa,
Polk County—ss.

I, Mrs. Frank W. Dodson, Recorder of said County, hereby certify that the foregoing writing is a copy from the original

record in my office, and the whole thereof, and recorded in Book No. 147 at pages 592 and 593.

Dated at Des Moines, Iowa, in said County this 10 day of December, 1909.

MRS. FRANK W. DODSON,
Recorder.

EXHIBIT 63.

"Stockholders' Meeting, August 17, 1891.

The stockholders of the Des Moines & Northwestern Railway Company met pursuant to call at the office of the company in the city of Des Moines, Iowa, on the 17th day of August, 1891.

Upon calling the roll of stockholders it was found that all the stockholders of the company, to-wit:

F. M. Hubbell, holding	3250	shares
G. M. Dodge	3500	do
L. M. Martin	1	
H. D. Thompson	1	
F. C. Hubbell	1	do
A. N. Denman	1	do
A. B. Cummins	1	do
F. M. Hubbell & son	3249	do

Total shares . . . 10904

were present in person or represented by written proxy duly authorized to act and vote in any matter which might come before the meeting.

Thereupon the following resolutions were offered by L. M. Martin & seconded by H. D. Thompson.

Whereas negotiations are now pending for the consolidation of the railway property of the Des Moines and Northern Railway Company extending from Farnham Street in the city of Des Moines to Boone, Iowa, and the railway properties of this company and for the merger of the two railway corporations into a single corporation under the provisions of the statutes of the state of Iowa; and

Whereas before the said consolidation & merger can take place the main and side tracks of this company's lines must be widened to the standard gauge of four feet and eight and one half inches; and

Whereas Independent of the said merger and consolidation it is desirable that such work be undertaken and the tracks

of this company be widened to the standard gauge before mentioned and this company is without funds or means to accomplish the same.

Now therefore, be it resolved by the stockholders of the Des Moines and Northwestern Railway Company at the stockholders meeting assembled all of the stock of the company being present and represented as hereinbefore set out that the Board of Directors of this Company be and they are hereby authorized to take the necessary steps to accomplish the consolidation of the said railway companies and properties (this company having first widened the gauge of said railway) upon the following terms and for the consideration hereinafter named as follows, to-wit: The said new corporation shall pay for the property of this Company by issuing to this Company or to its present stockholders, its first mortgage bonds in the sum of Sixteen Hundred Thousand Dollars said bonds to be secured by a trust mortgage upon the consolidated property of the new corporation consisting of all of the property of the two lines of railway hereinbefore mentioned except certain items of property agreed to be excepted from the said trust mortgage and the said issue of bonds not to exceed Eighteen Thousand Five Hundred Dollars (\$18,500.00) per mile of main track of said consolidated railway property. And the said new corporation shall also deliver to this company or to its stockholders in part payment for its property, Three Million One Hundred and Eight Thousand Dollars of its stock the said aggregate of stock and bonds so to be delivered to this company or to its present stockholders, to be in payment in full for the said property of this Company and the property of this company so to be turned over to the new corporation to be in payment in full for the said bonds and for the said stock and the said stock shall be issued as fully paid up stock and non-assessable for any purpose whatever.

And it is further resolved that this Company assents to all of the provisions of the contract entered into between Solon Humphreys and G. M. Dodge as parties of the first part, and F. M. Hubbell as party of the second part and executed on the first day of July A. D. 1891, in so far as the said contract relates in any way to this Company and this corporation agrees to take such future action as may be necessary to enable the said F. M. Hubbell to carry out the provisions of the said contract which contract is now before this stockholders meeting, and has been inspected by the stockholders.

Second: Resolved further that the Board of of Directors this Company shall immediately contract with F. M. Hub-

bell for the widening of the main and side tracks of the line of the railway of this company to the standard gauge of four feet & eight and one half inches & the said contract shall require the said Hubbell to lay the main track of the said line of railway from Clive to the City of Jefferson, Iowa with steel rails weighing at least fifty two pounds per yard & between Jefferson and Fonda the track shall be laid with the forty pound steel rails now in use, and so much of the best thirty five pound iron rails now in use as shall be necessary to complete the said track between said points. The said contract shall also require the said Hubbell to cause all of the bonds now outstanding against this Company to be surrendered and cancelled and shall further require the said Hubbell to take up, pay and discharge all of the floating debt now outstanding against this company.

Third: Be it further resolved that when the said contract for widening the gauge of the road shall have been completed and performed & and the other provisions thereof respecting the surrender & cancellation of the bonds of this company & of its floating indebtedness shall have been fully complied with, the said Hubbell shall be entitled to receive the sum of Fifteen Hundred and Sixty-nine Thousand dollars (\$1,569,000.00) together with the net earnings of the said road from March 1st to December 31, 1891, inclusive, as full price and consideration for the performance of his undertakings in said contract which sum shall be paid to him in the bonds of this company secured by trust mortgage upon all of its property and franchises or upon the consolidation of said companies as in the said contract contemplated, the said F. M. Hubbell agrees further to surrender and cancel all of the stock he now holds in this company and shall receive as full compensation for the performance of the provisions of his said contract and the surrender of his said stock of the bonds of the new corporation hereinbefore referred to and in lieu of the bonds of this company above referred to the sum of Fifteen Hundred and Sixty Nine Thousand Dollars thereof and of the stock of the new corporation the sum of Two Million and Eight Thousand Dollars thereof, together with the net earnings as hereinbefore set out.

And the said G. M. Dodge shall receive as full compensation for his interest as a bondholder & stock holder in this company of the said bonds of the new corporation the sum of Thirty one Thousand Dollars thereof and of the stock of the said new corporation the sum of Eleven Hundred Thousand Dollars thereof. The foregoing and the above named persons are the only persons interested in any manner in this company whether as stockholders, bondholder or otherwise or entitled to the

proceeds of the merger & consolidation of this railway company & its property with the Des Moines and Northern Railway Company & its property as hereinbefore contemplated.

Fourth: Resolved further that the distribution of the proceeds of the merger and consolidation of the said railway corporations and property as provided in the last preceding resolution in so far as the stockholders and bondholders of this company are entitled thereto or to any interest therein represents the entire interest of each person named therein in the property of this company as stockholders, bondholders or otherwise and the distributive share assigned to F. M. Hubbell by the terms of the said resolution represents not only his present interest in the property of this company, but also the full amount which he shall be entitled to receive in consideration of the agreement to be entered into with him for widening the gauge of the road of this company, taking up its present issue of bonds, its floating indebtedness &c., in the manner hereinbefore provided and he shall receive the said distributive share assigned to him in full compensation and satisfaction therefor.

And the said G. M. Dodge is to receive the portion of the proceeds of the said consolidation & merger assigned by the terms of the said resolution to him as full compensation for his interest in the property of this company both as stockholder, bondholder or otherwise.

Resolved further that these resolutions shall take the place of & stand in lieu of the resolutions adopted by this company on the 7th day of July, 1891.

The foregoing resolution after consideration were unanimously adopted all of the stock of the company voting in favor thereof and the same were declared to be adopted.

On motion it was ordered that the Board of Directors proceed to carry out the purpose and intent of the foregoing resolutions and to do all things needful to carry into effect the transactions therein provided for.

On motion adjourned to Aug. 18, 1891. A. N. Denman, Secretary.

EXHIBIT 64.

Articles of Consolidation and Incorporation of the

Des Moines, Northern & Western Railway Company.

Articles of Consolidation and Incorporation entered into this fourteenth day of December in the year one thousand eight

hundred and ninety-one, by and between the Des Moines & Northwestern Railway Company and the Des Moines & Northern Railway Company, corporations organized under the general laws of the state of Iowa, and owning and operating lines of railway therein in pursuance of the statute of said state relating to the merger and consolidation of the stock property franchises and liabilities of railway corporations.

The said Articles witness, that:

Whereas, a consolidation, union and merger of the capital stock, properties, franchises and liabilities of the above named corporations into a consolidated corporation, which shall own and be possessed of all the property, franchises, rights, privileges and immunities of each and both of said corporations, and such other property, rights, franchises privileges and immunities as it may hereafter acquire, will it is believed secure greater efficiency and economy in the management and operation of the lines of railway now or hereafter acquired, and thereby promote the interests of the public, of said corporate parties, and of all the shareholders and other parties in interest in each and both of them, and,

Whereas, resolutions authorizing such consolidation, union and merger, upon the terms and conditions hereinafter expressed, have been duly submitted to the stockholders of each of said corporations at meetings duly convened and held upon notice given in manner and form as required by law and the by-laws of said corporations, and said resolutions have been adopted and approved at each of said meetings by the votes of all the stock and stockholders of said respective corporations,

Be It Therefore known, that the said Des Moines & Northwestern Railway Company and the Des Moines and Northern Railway Company, by their respective officers thereunto duly authorized, in consideration of the premises and the mutual execution hereof, do adopt the Articles of Consolidation, convey, covenant and agree as follows, to-wit:

Article I.

They do hereby consolidate, unite and merge their capital stocks, franchises, rights, privileges and property of every nature and description, and thereby create a consolidated corporation which shall be known, styled and named:

Des Moines, Northern & Western Railway Company.

Article II.

The said Des Moines & Northwestern Railway Company and the said Des Moines & Northern Railway Company do hereby

respectively and severally grant, bargain, sell, release, convey, assign, transfer, and set over unto the Des Moines, Northern & Western Railway Company, the consolidated corporation hereby created, the several and respective railroads, railroad lands, rights of way, road beds, tracks, turnouts, and switches, stations, station grounds, lands, lots, bridges, cars, locomotives, rolling stock, tools, machinery, shops, roundhouses, fuel, timber, iron, stone, materials, goods and chattels, stocks, bonds, bills, notes, accounts, demands, moneys and things in action; and all and singular their several and respective estates, property and effects, real and personal, movable and immovable, wheresoever, howsoever and by whomsoever held; and all and singular their several and respective corporate and other franchises, rights, privileges and immunities. And said parties do mutually agree and declare that the same shall, from the execution of these Articles, be henceforth held and possessed by said consolidated corporation, its successors and assigns, forever, to and for its own use, benefit and behoof, forever, to all intents and purposes. And they do hereby further agree and declare that all the debts, obligations and liabilities of whatsoever kind and nature of said corporations and of each of them save and except such as are paid or discharged prior to the issuance of the capital stock to be issued for and in consideration of said consolidation, union and merger shall henceforth be the proper debts, obligations and liabilities of said consolidated corporation and of its successors forever, to all intents and purposes. And they do hereby further agree and declare that said consolidation, union and merger, and the transfer herein made, shall not operate to impair, destroy or extinguish the force or obligation of any contract, agreement or lease heretofore entered into by and between the parties hereto, or between said parties or either of them and any other person, partnership or corporation, if the continued force of such contract, or the continued obligation of the parties, thereunder is found necessary to the protection and security of the interests and title of said consolidated corporation or either of the parties hereto; and the right is expressly reserved to said consolidated corporation, and to such other parties as may be interested in the preservation of such contracts or obligations, to enforce the same in such manner as may be necessary for such purpose.

Article III.

The general purposes and objects of the Des Moines Northern & Western Railway Company, the consolidated corporation hereby created, shall be:

(1) To own, complete, extend, improve, maintain, and operate the line of railway heretofore owned and operated by the

Des Moines & Northwestern Railway Company, extending from Farnham Street in the city of Des Moines, Polk County, Iowa, through the counties of Polk, Dallas, Guthrie, Greene, Calhoun and Pocahontas to Fonda, in said last named county.

(2) To own, complete, extend, improve, maintain and operate the line of railway heretofore owned and operated by the Des Moines & Northern Railway Company, extending from Farnham Street in the city of Des Moines, Polk County, Iowa, through the counties of Polk, Dallas and Boone, to the City of Boone, in said last named county.

(3) To acquire terminal facilities in said city of Des Moines, and in other cities and towns into or through which its lines may pass either by purchase, construction or lease, and to maintain, extend, improve and operate the same.

(4) To use and enjoy all the corporate and other franchises, rights, privileges, immunities and property, of every nature, and description, which form a part of or are appurtenant or relate to either of said railway lines or corporations.

(5) To acquire, either by construction, purchase or lease, and to operate lines of railway lateral to or connected with the lines or railway hereinbefore described, or to or with either of them.

(6) To acquire, either by construction, purchase or lease, and to operate a line of railway extending from Des Moines, in the State of Iowa, eastwardly to a point upon the Mississippi River.

(7) To acquire, either by construction, purchase or lease and to operate a line of railway extending from Des Moines, aforesaid, southerly to a point upon the southern boundary of the State of Iowa.

(8) To acquire either by construction, purchase or lease, and to operate extensions of such lines of railway in other states.

(9) To acquire, either by construction, purchase or lease and to operate railway bridges over navigable rivers and waterways, when necessary to the extension or connection of any of the lines of railway hereinbefore mentioned.

(10) To purchase, own and sell capital stock of the Des Moines Union Railway Company, or any other Company owning or operating terminal grounds, tracks, or stations; also capital stock of any coal, stone or elevator company doing business upon its line of railway or either of them.

(11) To acquire, purchase own lease, sell and operate coal mines stone quarries, and elevators upon, adjacent or proximate to the said several lines of railway, or either of them.

Article IV.

The Des Moines, Northern & Western Railway Company, the consolidated corporation hereby created, shall have and possess:

(1) Each and all of the corporate and other franchises, rights, powers, privileges, immunities and property heretofore held, possessed, exercised or enjoyed by the said Des Moines & Northwestern Railway Company and the said Des Moines & Northern Railway Company, or by either of them, including all franchises, privileges and immunities secured to each by its chapter or charters, articles of incorporation, Articles of Association, and the laws of any state or of the United States.

(2) Such powers as may be necessary to the accomplishment of the purposes and objects declared in the third article hereof, and which it may legally assume and exercise as a consolidated corporation, in each of the several States in which any part of the railroads, which it will own or operate, is or may be situated; or into which any of said railroads may be lawfully extended.

(3) Power to renew or extend, in such manner as may be provided by law, its own corporate being, existence and franchises, and the existence of the corporate franchises, rights, privileges and immunities hereby consolidated, united and merged, if such extension and renewal shall, at any time, be deemed necessary to prevent the expiration of the same.

(4) Power to sue and to be sued in its corporate name, have a corporate seal and alter the same at pleasure; do any act or transact any business which a common carrier of persons and property may lawfully do; make contracts, acquire and transfer property; execute mortgages and issue mortgage bonds; establish by laws and make such rules and regulations as may be deemed necessary for the proper management of its business.

Article V.

The capital stock of the Des Moines, Northern & Western Railway Company, the consolidated corporation hereby created, shall be limited to the sum of Fifteen Million Dollars, unless the amount thereof be increased by an amendment of these articles adopted as herein provided; but in no event shall stock be issued to exceed twenty-eight thousand dollars

per mile of completed, equipped main track and branches. The said capital stock shall be divided into shares of the par value of One Hundred Dollars each.

Article VI.

The parties hereto do hereby further agree and declare that, inasmuch as all the stockholders and bond holders of the said corporations uniting herein, have mutually agreed to cancel and satisfy all the mortgage bonds and surrender all the capital stock of said corporations, and pay or discharge all the indebtedness thereof (except certain items to be assumed and paid by the consolidated company) whereby the property, franchises rights, privileges and immunities of said corporations so consolidated are free and clear of any of any incumbrance or lien, the said Des Moines Northern & Western Railway Company, shall upon said cancellation, satisfaction, surrender, payment and discharge issue and deliver for and on account of the said property, franchises, rights, privileges, and immunities of the Des Moines & Northwestern Railway Company, first mortgage bonds amounting at par value to Sixteen Hundred Thousand Dollars, and its capital stock, fully paid and non-assessable, amounting at par value to Three Million One Hundred and Eight Thousand Dollars; said bonds and capital stock to be delivered to the persons and in the proportion set forth in the resolutions adopted by the unanimous vote of all the stock and stockholders, and assented to by all the bonds holders of said Des Moines & Northwestern Railway Company, and said property shall be received by this company as payment in full for said stock and bonds; and in like manner the said Des Moines, Northern & Western Railway Company shall issue and deliver, for and on account of the said property, franchises, rights, privileges and immunities of the Des Moines & Northern Railway Company, first Mortgage bonds, amounting at par value to Six Hundred and Fifty-five Thousand Dollars, and its capital stock fully paid and non-assessable, amounting at par value to One Million and Nine-two Thousand Dollars; and said property shall be received by this Company as payment in full for said stock and bonds. Said bonds and capital stock to be delivered to the persons and in the proportion set forth in the resolutions adopted by the unanimous vote of all the stock and stockholders, and assented to by all the bondholders of said Des Moines & Northern Railway Company.

Article VII.

The affairs and business of the Des Moines Northern & Western Railway Company, the consolidated corporation hereby created, shall be under the general control of and be managed

ed by a Board of Directors, consisting of seven persons, to be elected by the stockholders from their own number at their regular annual meeting in each year; said directors shall hold their offices for one year, or until their successors are duly elected and qualified. Vacancies in the board by removal, death, resignation, or otherwise than by the expiration of the term of office, shall be filled by the board in such manner as is provided for in the by-laws. Ceasing to be a stockholder in the corporation shall be held to be a resignation as director.

Article VIII.

The executive officers of the consolidated corporation shall consist of a President, two Vice Presidents, a Secretary and a Treasurer. Said officers shall be elected by the directors at their first meeting after the annual meeting of stockholders, and shall hold their offices for one year, and until their successors are elected and qualified; they shall have such power and perform such duties as usually pertain to their respective offices, and such as may be conferred or imposed upon them in the by-laws. All vacancies in such offices shall be filled by the board of directors.

Article IX.

The Board of Directors is specially empowered as follows, to-wit:

(1) To adopt by-laws providing for the appointment of such managers, superintendents, employees and other officers not hereinbefore named, as may be deemed necessary for the transaction of the business of the corporation, and prescribing such additional rules and regulations as may be deemed proper for the transaction of the business and protection of the interests of the corporation.

(2) To exercise all the powers of the corporation which are not by these articles or by statute reserved or designated to be exercised by the stockholders.

(3) To appoint an executive committee, which shall consist of the president and two directors, and invest it with all the powers of the board when the latter is not in session.

(4) To elect officers and fill vacancies as hereinbefore provided.

Article X.

The annual meeting of the stock holders shall be held on the first Thursday of January of each year, at the office of the corporation in Des Moines, Iowa; and the first of such meetings shall be so held on the first Thursday of January

1892, but special meetings of the stockholders shall be called by the secretary at any time upon the written request of the president, or three directors, or stockholders holding one-third of the capital stock then issued. Ten days notice of any such special meeting shall be given to each stockholder by mailing such notice to his last known place of residence.

Article XI.

Immediately after the adjournment of such annual meeting of stockholders the newly elected Board of Directors shall meet for the purpose of electing officers as aforesaid, and the transaction of other business; and it shall hold such other meetings, whether regular or special, as shall be provided in the by-laws.

Article XII.

The principal office of the corporation for the transaction of its business shall be at Des Moines, Polk County, Iowa; but the Board of Directors may establish such other offices and financial agencies in other states, places and counties as it may deem proper for the convenience and economical management of the affairs of the corporation.

Article XIII.

At all meetings of the stockholders, each stockholder shall be entitled to cast one vote for each share of stock which upon the books of the company may appear to be held and owned by him; such vote may be cast either in person or by proxy; but if by proxy, written authority therefor must be filed with the Secretary before the meeting convenes. The shares of stock are transferrable; but no transfer shall be valid, or entitle the transferee to vote in any meeting, until the same has been entered upon the proper books of the company at the time and in the manner prescribed in the by-laws.

Article XIV.

It shall not be necessary, in order to enable the corporation to carry on the business for which it is organized, that all its authorized capital stock be subscribed, taken or issued.

Article XV.

The highest amount of indebtedness or liability to which the corporation shall at any time subject itself shall not exceed two thirds of the par value of its outstanding capital stock.

Article XVI.

The private property of the stockholders shall be exempt from the debts of the corporation.

Article XVII.

The existence of the corporation shall commence on the fourteenth day of December 1891, and continue for a period of fifty years, or the longest period which it may continue under the laws of the State of Iowa; and its said existence may be renewed from time to time, as may be provided by the statutes of said State of Iowa.

Article XVIII.

Until the election of a board of directors had, at the first annual meeting of the stockholders, the board of directors shall consist of F. M. Hubbell, G. M. Dodge, F. C. Hubbell, A. B. Cummins, L. M. Martin, H. D. Thompson, and A. N. Denman. Said board shall, as soon as practicable, elect officers as hereinafter named, and shall have all the powers herein conferred upon or vested in the board of directors of the corporation.

Article XIX.

These articles or any of them, may be amended at any annual meeting of the stockholders, or at any special meeting called for that purpose by a vote of two thirds of the shares of capital stock then issued or outstanding.

In Witness Whereof, the said Des Moines & Northwestern Railway Company by its President and the said Des Moines & Northern Railway Company by its Vice President, have hereunto set their respective corporate names and have impressed hereon their respective corporate seals, and have caused the same to be attested by their respective Secretary and assistant Secretary the day and year above written.

(Seal)

**DES MOINES & NORTHWESTERN
RAILWAY COMPANY.**

By F. M. Hubbell, President.

Attest: A. N. Denman, Secretary.

(Seal)

**DES MOINES & NORTHERN
RAILWAY COMPANY,**

By A. B. Cummins, Vice President.

Attest: L. M. Martin, Assistant Secretary.

State of Iowa,
County of Polk—ss.

Be it remembered that on this fourteenth day of December 1891, before me a notary public in and for the County of Polk and state of Iowa, personally appeared F. M. Hubbell, President, and A. N. Denman, Secretary of the Des Moines & Northwestern Railway Company, and A. B. Cummins, Vice President, and L. M. Martin Assistant Secretary, of the Des Moines & Northern Railway Company, personally to me known to be the officers aforesaid, and to be the persons who respectively signed and attested the respective signatures of said corporations to the foregoing Articles of Consolidation and Incorporation, and affixed their respective seals thereto, and severally acknowledged the execution of said instrument to be the voluntary act and deed of said respective corporations, and their own voluntary act and deed, for the uses and purposes therein expressed.

Witness my hand and notarial seal the day and year last above written.

(Seal)

JAS. P. HEWITT,
Notary Public in and for the County of
Polk and State of Iowa.

Filed for Record December fourteenth, 1891, at 6.00 o'clock
P. M. Geo. C. Sims, Recorder.

State of Iowa,
Polk County—ss.

I, Mrs. Frank W. Dodson, Recorder of said County, hereby certify that the foregoing writing is a copy from the original record in my office, and the whole thereof, and recorded in Book 8, pages 276 to 285, inclusive.

Dated at Des Moines, Iowa, in said County, this 10 day of December 1909.

Mrs. FRANK D. DODSON, Recorder.

EXHIBIT 65.

Des Moines Northern & Western Railway Company
to
Metropolitan Trust Company of the City of New York, Trustee.
Trust Mortgage.

This Indenture made and entered into this fifteenth day of December A. D. 1891, by and between the Des Moines Northern & Western Railway Company, a corporation created under and by virtue of the laws of the state of Iowa, party of the first part, and the Metropolitan Trust Company of the City of New

York, a corporation created under and by virtue of the laws of the State of New York, as trustee, party of the second part, Witnesseth that:

Whereas, the Des Moines Northern & Western Railway Company was on the fourteenth day of December A. D. 1891, duly created and incorporated by the consolidation union and merger of the Des Moines Northwestern Railway Company and the Des Moines & Northern Railway Company, and the adoption of certain articles of consolidation and incorporation, which articles have been duly filed and recorded as required by the laws of the State of Iowa, and,

Whereas, by such consolidation and incorporation, the party of the first part has become the owner and is now in possession of those certain lines of railroad formerly owned by and possessed respectively by the said Des Moines & Northwestern Railway Company and the Des Moines & Northern Railway Company, to-wit, one extending from Faruham street in the City of Des Moines, Iowa, through the counties of Polk, Dallas, Guthrie, Green, Calhoun, and Pocahontas, to Fonda in said last named County, and one extending from Faruham Street aforesaid, through the counties of Polk, Dallas and Boone, to the city of Boone in said last named County, together with all the franchises, rights, privileges and immunities and property formerly belonging to said two railway corporations, or to either of them, and is also the owner of other valuable franchises, rights and privileges, more particularly set forth in said articles of consolidation, and

Whereas, all said property is now free and clear of any lien or incumbrance whatsoever, and

Whereas, for the purpose of satisfying the consideration for the consolidation, union and merger of said lines of railway of making payment for other property heretofore purchased by party of first part, of securing further equipment, and of adding other betterments, it is necessary that there should be immediately issued by party of first part, and certified by party of second part hereunder mortgage bonds at the rate of eighteen thousand five hundred dollars per mile of standard gauge main track now owned and operated by party of first part, and,

Whereas, the present mileage of standard gauge main track is approximately one hundred and fifty miles and it is proposed and expected to increase such mileage by the construction or purchase of additions, extensions, and branches, and to issue additional mortgage bonds at the said rate of eighteen thousand five hundred dollars per mile of all such additions extensions or branches so constructed or purchased, and equipped

to be certified by party of second part upon the sworn certificate of the president or chief engineer of party of first part, showing such additions, extensions or branches to have been so acquired and equipped and the extent thereof, and,

Whereas, it is the intent that all the mortgage bonds issued and certified hereunder shall be upon an equality with respect to the security for the payment thereof by these presents, notwithstanding the same be issued and certified or authenticated at different times, and,

Whereas, for all the purposes aforesaid, the party of the first part proposes to issue its first mortgage bonds, which together with the interest coupons annexed thereto and the trustees certificate indorsed thereon shall be in the following form, to-wit:

\$1,000.00

\$1,000.00

United States of America

Des Moines Northern & Western Railway Company

First Mortgage Bond.

Forty years after date, for value received, the Des Moines Northern & Western Railway Company, a corporation of the State of Iowa, promises to pay to the holder of this bond, or in case it be registered, then to the registered owner thereof, at the office of the Metropolitan Trust Company, of the City of New York, One Thousand Dollars, in Gold Coin of the United States of America, of or equal to the present standard of value and also interest thereon at the rate of four per cent, per annum, payable semi-annually, in like Gold Coin on the first days of January and July in each year, on the presentation and surrender of the respective interest coupons hereto annexed, at the office aforesaid, for and during five years from and after the date hereof, and interest thereon at the rate of five per cent per annum payable semi-annually, in like Gold Coin, on the first days of January and July in each year on the presentation and surrender of the respective interest coupons hereto annexed, at the office aforesaid, for and during the remaining period of this bond.

This bond is one of a series, each of the denomination of one thousand dollars, the payment of the principal and interest of which is secured by an indenture of mortgage bearing date December fifteenth A. D. 1891, conveying to the trustee therein and hereinafter named, in trust, for the holders of said bonds, the railway franchises, property and income of said railway company, described in said mortgage, and which is a first lien thereon.

The issue and certification of bonds by the Trustee is limited to eighteen thousand five hundred dollars per mile of completed and equipped main track, and branches.

If default shall be made in the payment of any semi annual installment of interest on this bond, or any bond of this series when the same shall have become due and be demanded, and shall remain unpaid for six months after such demand, the principal of such bond shall become due and payable in the manner provided in the said mortgage. The said Company and all its property are liable for the payment of this bond, but it is expressly understood and agreed that in no event shall either the officers or stockholders be personally liable for the payment thereof whether by reason of the non-payment of capital stock or otherwise.

Said Company hereby waives the benefit of any extension stay or appraisement laws now existing or that may hereafter exist. This bond is to be valid only when authenticated by a certificate indorsed thereon, signed by the Metropolitan Trust Company, Trustee to the effect that it is one of the bonds secured by the said mortgage and is issued in conformity with its provisions.

In Witness Whereof, the said Des Moines Northern & Western Railway Company has caused its corporate name to be hereto signed by its president, and its corporate seal to be hereto annexed and attested by its secretary, and the annexed interest coupons to be executed with the engraved signature of its Treasurer, this the first day of January A. D. 1892.

Coupon.

On the first day of July A. D. 1892, the Des Moines Northern & Western Railway Company, will pay the bearer at the office of the Metropolitan Trust Company of the City of New York, Dollars, being interest for six months on Bond No.

Trustee's Certificate.

This is to certify that this bond is one of the series of bonds of one thousand dollars each secured by and mentioned in the mortgage above referred to, and that it is issued in conformity with its provisions.

Now Therefore, Know All men by these Presents: That the Des Moines Northern & Western Railway Company, party of the first part, to secure the payment equally of all the bonds issued by it and certified by the party of the second part, hereunder in the manner herein provided, doth grant, bargain, sell, convey and transfer to the Metropolitan Trust Company

of the City of New York as Trustee, and to its successor, or successors in trust, all its railroad extending from Farnham Street in the City of Des Moines, County of Polk and State of Iowa, through the counties of Polk, Dallas, Guthrie, Greene, Calhoun and Pocahontas, Iowa, to Fonda, in said last named county, and also extending from Farnham Street aforesaid over the same line to Clive in said County of Polk, and thence through the counties of Polk, Dallas and Boone, Iowa, to the City of Boone in said last named County, together with all its real estate, necessary for and used in the operation of said lines of railway, its rights of way, road-bed, bridges, tracks, side-tracks, turnouts, switches, buildings and structures, water tanks and fixtures, shops, engine and other houses, depots, turn-tables, engines, cars and machinery, also together with all its corporate and other franchises, rights, privileges and immunities, rents, issues, tolls, and earnings, also all its property of whatsoever name and nature or description that may hereafter be acquired, also a one-fourth interest in the capital stock of the Des Moines Union Railway Company; but it is expressly understood and agreed that this mortgage does not convey an additional five eighths interest in the capital stock of said Des Moines Union Railway Company, of which the party of the first part is the owner, nor one half of the capital stock of the Midland Coal Company, of which party of the first part is also the owner, it being the intent hereby to convey and mortgage all its railroad property and all things appurtenant thereto, or used in connection therewith, weather now, acquired and owned, or hereafter acquired and owned, except as hereinbefore provided. To have and to hold, the above granted and described property and its appurtenances unto the party of the second part as trustee, its successor or successors, in office, upon the trusts and conditions, and for the purposes hereinafter expressed, namely:

First. The party of the second part as trustee, shall immediately upon the acceptance of the trust and upon being furnished with the sworn certificate of the president, or chief engineer, of party of the first part, showing the existing mileage of equipped main track, or branches owned and operated by party of first part, certify and deliver to the party of the first part, bonds at the rate of eighteen thousand five hundred dollars per mile of such existing mileage as shown by such certificate, and it or its successor or successors shall from time to time upon the sworn certificate of the president or chief engineer of the party of the first part, showing additions or extensions of equipped standard gauge main track, or

branches, certify and deliver to party of first part additional bonds, at the rate of eighteen thousand five hundred dollars per mile, of such completed and equipped additions, extensions or branches, provided, however, that in no event shall the aggregate issue of bonds issued and certified hereunder exceed eighteen thousand five hundred dollars per mile of completed and equipped main track and branches, which the party of the first part now owns, or hereafter acquires or constructs.

Second. No bond issued by the party of the first part shall be held to be issued hereunder or secured hereby unless the same is certified by the party of the second part as shown in the preamble hereof, and wherever the word "bondholders" is hereinafter found it shall be held and construed to mean the holders of bonds so certified, and wherever the word "bonds" is hereinafter found it shall be held and construed to mean bonds so certified.

Third. It is further agreed between all parties in interest that the party of the first part and all its property are liable for the payment of all bonds issued hereunder and secured hereby, but it is also expressly understood and agreed that in no event shall either the officers or stockholders be personally liable for the payment of said bonds or the interest thereon, or any part thereof, either principal or interest, weather by reason of non-payment of capital stock or otherwise.

Fourth. If the Des Moines Northern & Western Railway Company shall fail to pay ~~the said~~ interest coupons subjoined to the bonds so executed by ~~that~~ company, or any or either of the said coupons, or any part of the same at the time or times, and in the manner so as aforesaid, for the payment thereof, and in case such default shall continue for the space of ninety days, the party of the second part, or its successors may at the request of the holders of more than one half the outstanding bonds issued hereunder, enter upon and take possession of all or any part of the above granted premises and itself and by its attorneys agents and servants may take, hold use and operate the same, making from time to time needful repairs and alterations, and may receive the tolls rents, issues, profits and income derivable therefrom, and after deducting and paying out of such gross receipts and income the expenses of operating and managing the premises and of such needful repairs and alterations, and any taxes and other necessary and proper charges upon or pertaining to the premises and executing the hereby created trust, the party of the second part, or its successors in the trust, shall apply the surplus or net receipts and income so derived by it to the payment of the

said interest coupons in the order in which the same shall have become or shall be due and payable.

Fifth. If default shall so as aforesaid be made in the payment of the said interest coupons, or any or either thereof, and shall continue for the period of six months, then and in such case after the entry as aforesaid, or without such entry, and upon written request of bondholders holding and owning more than one half of the aggregate amount of the bonds so executed by the Des Moines Northern & Western Railway Company, certified by the trustee, and then outstanding and unpaid, the party of the second part, or its successor in the trust, may personally, or by its attorneys, or agents, sell and dispose of all and singular the above granted and described premises at public auction in the City of Des Moines, Iowa, having first given notice of the time and place of such sale by advertisement published in some newspaper of general circulation published in the city of New York and also in one newspaper of general circulation published in the said city of Des Moines, and also in one newspaper published in each other county in Iowa through or into which the said railroad extends, and which notice shall in each of said newspapers be so published at least once in each week for at least six weeks immediately preceding the sale. And the party of the second part, or its successors, in the trust, may make, execute and deliver to the purchaser or purchasers at such a sale a good and sufficient deed of the premises so sold to it, him or them, and the sale so made as aforesaid, shall be perpetual bar, both in law, and in equity, against the party of the first part, and all other persons lawfully claiming or to claim the said premises, or any part thereof by, from, through or under it. But if by it deemed expedient the party of the second part or its successor or successors in the trust, may cause such sale to be made through or under judicial proceedings of foreclosure and sale, to be instituted by it or its successor or successors.

Six. From the proceeds of any sale which may so as aforesaid be made, after deducting the proper costs and expenses thereof and of the proceedings and all other expenses, advances or liabilities which shall have been duly incurred under these presents, or the powers hereby created, or for taxes, or for other proper charges, and the reasonable compensation of the party of the second part, or its successors in or for the execution of the hereby created trust, the party of the second part, or its successor or successors shall apply the remainder of such proceeds to the payment of the principal of such of said bonds so executed by the Des Moines Northern & Western Railway Company as have been duly certified and issued in the manner hereinbefore provided, and which shall then be

outstanding and unpaid, and of the interest which shall then have accrued upon such principal and shall be in arrear and unpaid. And if after so paying all sums payable for principal and accrued interest upon said bonds, a surplus shall remain, such surplus shall belong and be paid to the party of the first part is successor or successors, or assigns. But if such proceeds shall not be sufficient for payment of all the said bonds in full, the same shall be applied ratably and without discrimination or preference upon or toward the payment of the principal and interest of all the same, except that such payment of or upon interest coupons shall be in the order of the date of their maturity.

Seventh. If default shall be made in the payment of any of the interest coupons aforesaid, according to the tenor thereof, and such default shall continue for the space of six months, then and in such case, and after the lapse of the said six months, the sums of principal secured by all the said bonds so executed by the party of the first part, with all accrued unpaid interest thereon, shall at the option of the party of the second part, or its successor or successors, become (for all the purposes of these presents) immediately due and payable, anything contained in said bonds, or in these presents notwithstanding. But a majority in interest of the holders of the said bonds may in writing (and for all the purposes of these presents) revoke or annul the decision of or upon such option and instruct that party of the second part, its successors or successors, to declare such principal to be so due, or to waive that right, provided, however, that nothing done or omitted in respect to such default shall prejudice the rights of the party of the second part, its successor or successors in trust, in respect of any subsequent default.

Eighth. Upon payment by the party of the first part of all sums which shall become due for principal and interest under and by virtue of said bonds, and of all sums incurred, or chargeable under and by virtue of these presents, then and thereupon all estate and power of the party of the second part and its successor or successors under or by virtue of these presents, shall cease and determine.

Ninth. If by reason of any default, as hereinbefore provided, possession of the above granted and described premises shall be taken and no sale thereof shall have been had under the hereby created powers, such possession will be surrendered upon payment created powers, such possession will be surrendered upon payment of all sums then due upon the said bonds and hereinbefore contemplated to be payable up to and at the time of such surrender, including in such payment the

principal, if then due, by the terms of said bonds, or by election as above provided. But the said surrender shall be of the premises as existing at the time thereof, and shall not prejudice or impair the estate and lien of these presents in respect of any sums secured by the said bonds and not theretofore paid or satisfied, nor affect or impair the rights of the party of the second part, its successor or successors in respect of any thereafter accruing default.

Tenth. It is understood and agreed that these presents shall be a security for the due payment of all sums which shall become due and payable under or by virtue of the said bonds, notwithstanding any laws of the State of Iowa, now existing or hereafter to be enacted for the extension, stay of execution, valuation, or appraisal, and without delay or relief from or by reason thereof; and that all operation and benefit of such laws are hereby waived to the end that the same shall not be invoked or be made effective to restrict postpone or impair the operation of these presents, or the estate and power thereby created.

Eleventh. It shall be the duty of the second part its successor or successors, to proceed in and with the execution of the several powers so vested in them in the manner and at the time or in the cases hereinbefore specified for the exercise thereof, provided that, requisition in writing to so proceed shall be made upon them by or in behalf of the holders of more than one half in amount of the said bonds then outstanding and unpaid.

Twelfth. The said party of the second part or any successor to it in the trust hereby created may resign as trustee under these presents by writing taking effect thirty days after the delivery thereof, to the said party of the first part, and upon the payment of its reasonable charges for services rendered and money expended in the performance of its duties up to that time, it may be removed and a successor or successors appointed by writing signed by the holders of a majority of said bonds at the time outstanding.

The said trustee shall receive a reasonable compensation for every act done by it as such trustee under this indenture and the said trustee shall not be required to take any step in the execution of this trust likely to subject it to liability, or expense, unless the holders of the bonds secured thereby, or some of them, shall give sufficient security to indemnify the trustee from such liability or expense.

And the said trustee shall be at liberty to appoint counsel learned in the law in all suitable cases, whose reasonable fee shall be a proper charge upon the trust estate.

And it is hereby further provided that the trustee shall not be liable for any default or neglect of any agent by it appointed when such agent shall have been selected with reasonable discretion and shall only be required to exercise good faith and ordinary diligence in the performance of its duties under this indenture.

It is agreed between the parties hereto and made a part of the contract with the holders of the bonds secured hereby that the said trust company the trustee herein, shall not be required to look beyond the sworn certificate or certificates of the president or chief engineer as the case may be, as herein provided, and shall not be responsible in any event for any act done in pursuance of such certificate or certificates.

Thirteenth: The party of the first part its successors and assigns, shall and will duly execute to the party of the second part, its successor or successors, such further deeds, conveyances and assurances in the law for the better assuring to the party of the second part, its successor or successors, upon and for the trusts and purposes aforesaid, all and singular the premises above granted and described, or intended to be granted and included in the lien of these presents, as shall from time to time be reasonably required of it, by the party of the second part and its successors.

Fourteenth. If by reason of resignation or otherwise during the existence of the trust hereby created there shall occur or be a vacancy in the office of the trustee hereinbefore named, the same may be filled by appointment in writing executed by the holders of at least one half in amount of the bonds which shall then be unpaid and outstanding. Nothing herein contained, however, shall be so construed as to prohibit or prevent the due filling of such vacancy by authority of a court of competent jurisdiction in a proceedings to which the then holders of the said bonds and the party of the first part are duly made parties or of which they have had due or reasonable notice.

Fifteenth. The party of the first part by resolution of its board of directors approved at a meeting of its stockholders, hath authorized these presents to be duly executed to the party of the second part, but nothing herein contained is to be in any wise construed as subjecting to personal liability in the premises the officers or stockholders of the party of the first part or any or either of them, or their or his personal or individual estate.

In witness whereof, the Des Moines & Western Railway Company, in pursuance of the resolution aforesaid, has

caused these presents to be executed by its president, and attested by its secretary, and has caused its corporate seal to be hereunto affixed the day and year first aforesaid, and the Metropolitan Trust Company, of the City of New York, has also executed the same to evidence its acceptance of the trust hereby created, the day and year aforesaid.

(Corporate seal) DES MOINES NORTHERN & WESTERN
RAILWAY COMPANY,

By F. M. Hubbell, President.

Attest:

R. L. Chase.

(Corporate Seal) METROPOLITAN TRUST COMPANY OF
THE CITY OF NEW YORK, TRUSTEE.

By Thos. Hillhouse, President.

Attest:

Beverly Chew, Secretary.

State of Iowa,

Polk County—ss.

Be it remembered that on this fifteenth day of December A. D. 1891, personally came before me, the undersigned, a notary public within and for the county aforesaid, F. M. Hubbell, who being personally known to me to be the identical person who affixed the name of the Des Moines Northern & Western Railway Company to the foregoing instrument, and being by me duly sworn doth depose and say that he is the president of the Des Moines Northern & Western Railway Company, grantor in the foregoing instrument, that the name of said company is signed to said instrument by him as president of said company, by virtue of the order of the board of directors, that the seal of the company attached thereto is the proper and genuine seal of said company, and is affixed thereto by order of the said board of directors.

And the said F. M. Hubbell, president as aforesaid, acknowledged the foregoing instrument to be the voluntary act and deed of the Des Moines Northern and Western Railway Company, by him done and executed and his own voluntary act and deed for the uses and purposes therein expressed.

In witness whereof, I have hereunto set my hand and affixed my notarial seal of office this fifteenth day of December A. D. 1891.

(Notarial Seal)

JAS. P. HEWITT,
Notary Public Polk County Iowa.

State of Iowa,
Polk County—ss.

Be it remembered that on this fifteenth day of December A. D. 1891, personally came before me the undersigned, a notary public within and for the county aforesaid, R. L. Chase, who being personally known to me to be the identical person who countersigned and attested the signature of the Des Moines Northern & Western Railway Company to the foregoing instrument, and being by me duly sworn, doth depose and say, that he is the secretary of the Des Moines Northern & Western Railway Company grantor in the foregoing instrument, that he countersigned the said instrument and affixed the seal of said company thereto by order of the board of directors thereof and he acknowledged the execution thereof to be the voluntary act and deed of said company by him done and executed and his own voluntary act and deed for the uses and purposes therein expressed.

In witness whereof, I have hereunto set my hand and affixed my notarial seal of office this fifteenth day of December A. D. 1891.

(Notarial Seal)

JAS. P. HEWITT,

Notary Public Polk County Iowa.

State of New York,
County of New York—ss.

Be it remembered that on this nineteenth day of December A. D. 1891, before me a notary public within and for the State, County and City of New York, personally appeared Thomas Hillhouse and Beverly Chew, respectively the president and Secretary of the Metropolitan Trust Company of the City of New York, and personally known to be to be such officers, and the persons who executed the foregoing instrument for and on behalf of the said Metropolitan Trust Company of the City of New York, and acknowledged the execution thereof to be the voluntary act and deed of said corporation by them thereunto duly authorized and their own voluntary act and deed for the uses and purposes therein expressed.

Witness my hand and notarial seal the day and year last above written.

(Notarial seal)

RAYMOND J. CHATRY,

Notary Public N. Y. Co.

#236

Filed for Record Dec. 22, 1891. at 4:00 o'clock P. M.,

GEO. C. SIMS,
Recorder.

EXHIBIT 66.

United States Circuit Court, Southern District of Iowa,
Central Division.

October Term 1894.

Saturday Nov. 10/94.

The Metropolitan Trust Company of the City of New York,
Trustee, Complainant,
No. 2326. vs. Eq.

Des Moines Northern & Western Railway Company, Defendant.

Decree.

This cause came on for hearing on this 7th day of November 1894, being one of the days of the October Term 1894, of said Court, the complainant, the Metropolitan Trust Company of New York, Trustee, appearing by Thos. F. Hillhouse, and Cummins & Wright, its solicitors, and the defendant Des Moines Northern & Western Railway Company, appearing in its corporate capacity through its president and secretary, by an answer duly signed by the president of the said defendant, and attested by its secretary, with the seal of the corporation thereunto affixed.

And it appearing to the court that the defendant has filed its said answer admitting the allegations of the bill of complaint, and contending that a decree might be entered at once upon said bill and whereas it has in open court approved the terms and provisions of this decree, thereupon the court by and with the consent of the said defendant, and upon the proof submitted, finds:

That the defendant the Des Moines & Western Railway Company is a corporation organized under the laws of the State of Iowa, and is the owner of a certain line of railroad extending from Farnham Street in the city of Des Moines in Polk County, Iowa, through the counties of Polk, Dallas, Guthrie, Greene, Calhoun, and Pocahontas, to the town of Fonda, in said last named county, and also of a line of railroad extending from Clive in the county of Polk through the said county to the City of Boone in the county of Boone and state of Iowa, together with the real estate necessary for and used in the operation of said lines of railway, also its rights of way, road bed, bridges, tracks, side tracks, turn outs, switches, buildings and structures, water tanks and fixtures, shops, engine and other houses, depots, turntables, engines, cars and machinery, and also certain corporate and other franchises, rights, privileges and immunities, with the right to receive certain

rents, issues, tools and earnings; all of said property being such as is commonly appurtenant to a railway.

That on the 15th day of December 1891, the said Des Moines Northern & Western Railway Company issued and delivered to the complainant as trustee, a certain indenture of mortgage for the purpose of securing the payment of an issue of bonds to be executed and delivered by the said Railway Company to the extent of eighteen thousand five hundred dollars per mile of completed and equipped road. That in and by said mortgage there was conveyed to said complainant as trustee its said lines of railroad above described with the appurtenant property rights and franchises hereinbefore mentioned, to-wit: All its real estate, necessary for and used in the operation of said lines of railway, its rights of way, road bed, bridges, tracks, side tracks, turnouts, switches, buildings and structures, water tanks and fixtures, shops, engine and other houses, depots, turn tables, engines, cars and machinery, also all its corporate and other franchises, rights, privileges and immunities, rents, issues, tolls and earnings, also all its property of whatsoever name, nature and description thereafter acquired, also a one fourth interest in the capital stock of the Des Moines Union Railway Company, it being by the said mortgage expressly understood and agreed that the said mortgage did not embrace or convey an additional five-eighths interest in the capital stock of said Des Moines Union Railway Company of which the said Des Moines Northern & Western Railway Company was the owner, nor one-half the stock of the Midland Coal Company, of which the said Railway Company was the owner. With the said exceptions, however, it was expressly declared in and by the said mortgage that it was the intent thereby to convey by mortgage all the railroad property and all things pertaining thereto or used in connection therewith, whether then owned or thereafter acquired.

The court further finds and adjudges that the lien of said mortgage attached to all the property hereinbefore described, that is, to the said lines of railroad with all the appurtenant property hereinbefore mentioned, from and after the 15th day of December 1891, and that the said lien is now in full force and effect.

The court further finds that the said mortgage was duly recorded in the offices of the Recorders of the counties of Polk, Dallas, Guthrie, Greene, Calhoun, Pocahontas and Boone, as alleged in the bill of complaint; and it further finds that a true copy of the said mortgage is attached to the bill of complaint.

The court further finds and adjudges that the said Des Moines Northern & Western Railway Company, for the purposes named in said mortgage, and in accordance with its provisions, issued and delivered to divers persons its mortgage bonds in the sum of one thousand dollars each to the aggregate amount, exclusive of interest of Two Million Seven Hundred and Seventy Thousand Dollars (\$2,770,000) all of which bonds were in accordance with the provisions of said mortgage duly certified by the complainant and that there is now outstanding of such certified bonds in the aggregate, Two Million, Seven Hundred and Seventy Thousand Dollars (\$2,770,000), exclusive of interest, all of which constitute valid obligations of the said defendant and none of which have been paid.

The court further finds and adjudges that the interest coupons maturing July 1st, 1893, upon the said bonds hereinbefore mentioned, the defendant failed to pay the following, to-wit:

The coupons upon bonds numbered 512 and 513; the coupons upon bonds 774 to 2447, both inclusive; the coupons upon bonds numbered 2600 to 2675, both inclusive; in all seventeen hundred and eighty two (1782) coupons of twenty dollars each, amounting in the aggregate to thirty five thousand six hundred and forty dollars (\$35640) of interest so maturing July 1st 1893.

The court further finds and adjudges that the interest coupons upon the said bonds hereinbefore mentioned maturing January 1st, 1894, the defendant failure to pay the following, towit: The coupon upon bond numbered 291; the coupons upon the bonds numbered 651 to 2447, both inclusive; the coupons upon the bonds numbered 2578 to 2675, both inclusive; being eighteen hundred and ninety six (1896) coupons of twenty dollars each amounting in the aggregate to thirty seven thousand nine hundred and twenty dollars (\$37,920) of interest so maturing January 1st, 1894.

The court further finds and adjudges that of the coupons maturing upon said bonds July 1st, 1894, the defendant failed to pay the following, to-wit:

The coupons upon bonds numbered 47 to 81, both inclusive; the coupons upon bonds numbered 83 to 123, both inclusive; the coupons upon bonds numbered 291; the coupon upon bond numbered 549; the coupons upon bonds numbered 651 to 739, both inclusive, the coupons upon bonds numbered 742 and 743;

the coupons upon bonds numbered 2578 to 2599, both inclusive; in all one hundred and ninety one (191) coupons of twenty dollars each; amounting in the aggregate to three thousand eight hundred and twenty dollars (\$3,820) of the interest so maturing July 1st, 1894.

The court further finds and adjudges that the aggregate amount of the unpaid interest as hereinbefore set out is seventy-seven thousand three hundred and eighty dollars (\$77,380) of which thirty five thousand six hundred and forty dollars (\$35,640) bears interest at six per cent from July 1st 1893. Thirty seven thousand nine hundred and twenty dollars (\$37,920) from January 1st, 1894, and three thousand eight hundred and twenty dollars (\$3,820) from July 1st, 1894; and that the whole amount now due upon the bonds so issued and secured by said mortgage, including principal, coupons and interest upon coupons, is two million, eight hundred ninety one thousand, sixty and 98/100 dollars (\$2,891,060.98), all of which now remain unpaid.

The court further finds and adjudges that demand for the payment of said interest coupons was at their maturity duly made and that prior to the filing of the bill of complaint herein, to-wit: On or about the 30th day of August 1894, the holders and owners of more than one half of the said mortgage so outstanding and unpaid made written requisition upon the complainant as such trustee to declare the whole principal sum of said bonds immediately due and payable, and to at once proceed with the foreclosure of the said mortgage as provided by law. That thereupon and on or about said 30th day of August 1894, the complainant did, in pursuance of said requisition, and in accordance with the terms of the trust created by the said mortgage, exercise the option conferred upon it therein, and declared the whole principal sum evidenced by the said several bonds issued under the said mortgage to be then due and payable, and that on or about said 30th day of August 1894, it caused to be served upon the defendant written notice of the exercise of such option, and that thereupon the whole sum of said bonds became immediately due and payable.

And now, the court having considered the premises, and being fully advised, doth hereby adjudge and decree that within ten days from the date of entering this decree the said defendant, the Des Moines Northern & Western Railway Company shall pay to the Metropolitan Trust Company of the City of New York, as Trustee, the full sum of money herein declared to be due upon said bonds, coupons and interest upon coupons, to-wit: The sum of two million eight hundred and ninety one thousand, sixty and 98/100 Dollars (\$2,891,060.98) together with interest upon said last mentioned sums at the

rate of four per cent per annum, from this date, and all the costs of this suit. That if the said defendant shall fail within the aforesaid to pay said sum of money, it is hereby adjudged and decreed that the said trust mortgage heretofore referred to, and a copy of which is attached to the bill of complaint, be and the same is hereby foreclosed, and that all the property, rights, franchises and interests of the defendant aforesaid, to-wit: Its line of railroad, extending from Farnham Street in the city of Des Moines, Polk County, Iowa, through the counties of Polk, Dallas, Guthrie, Greene, Calhoun and Pocahontas, to Fonda in the said last named county, and also extending from Clive in the County of Polk, through the said county of Boone in the county of Boone, and state of Iowa, together with all its real estate, necessary for and used in the operation of said lines of railroad, its right of way, road bed, bridges, tracks, side tracks, turnouts, switches, buildings and structures, water-tanks and fixtures, shops, engine and other houses, turn outs, switches, buildings and structures, water tanks and fixtures, shops, engine and other houses, turn tables, engines, cars and machinery; also, together with all its franchises, rights, privileges and immunities, rents, issues, tolls and earnings, owned by it, at the time of the entry of this decree; also a one fourth interest in the capital stock of the Des Moines Union Railway Company, and all its appurtenant railroad property, or so much thereof as may be necessary to pay and satisfy said sum, be sold to pay and satisfy said sums of money so found to be due from the said defendant to the complainant upon said bonds and coupons, together with interest at four per centum per annum. It is further adjudged and decreed that the sale of said property rights and interests be without redemption, and that the said sale upon confirmation and upon payment of the purchase price of said property shall forever bar and foreclose all right, title or interest, or equity of redemption of said Des Moines Northern & Western Railway Company, in the said property so ordered to be sold, and which is conveyed by said mortgage and in each and every part thereof, and shall also forever bar and foreclose all the rights, title and interest or equity of redemption of all persons claiming through, or under the said defendant, but it is expressly provided that such sale shall be without prejudice to the rights and equities of persons holding at the date of such sale claims or demands entitled to payment in preference to said mortgage indebtedness.

It is further adjudged and decreed that the property be sold at public auction to the highest bidder or bidders. Such sale shall be held at the east door on Court Avenue of the United States Court House in the city of Des Moines, Polk County, Iowa, between the hours of ten o'clock A. M. and four o'clock

P. M., of such day as the Commissioner hereinafter named shall appoint. Said Commissioner shall give notice of the time, place and terms of such sale by a printed publication at least once each week for four consecutive weeks, the last publication to be not less than five days before the sale, in the Iowa State Register, a newspaper published in the city of Des Moines Polk County, Iowa.

It is further ordered adjudged and decreed that the highest bidder at such sale may pay all or any part of the purchase price of said property in the said bonds of the defendant Company, at their face value with accrued interest, such bonds so offered as a part of the purchase price being by such Commissioner, at the time, cancelled and satisfied; provided that if such bidder shall not deposit with the clerk of this court all the bonds and coupons so issued as aforesaid, there shall be paid in cash that proportion of the purchase price to which the bond holders who do not surrender their bonds would be entitled in distribution, that is to say, their pro rata shares of the entire purchase price, less the costs of this foreclosure, and provided further, that such purchaser shall in any event pay in cash whatsoever sum is necessary to pay the costs of this suit, including the sums hereinafter allowed as an attorney's fee for the complainant under the terms of said mortgage.

It is further adjudged and decreed that each bidder shall before his bid is received by such Commissioner making such sale deposit with such Commissioner the sum of five thousand dollars either in cash or in bonds, and the condition of such deposit shall be that if the property is sold to any such bidder, and he fails to comply with the terms of the sale upon his part, or to pay the full purchase price which he agrees to pay, then the sum so deposited shall be forfeited and shall be used in the payment of said bonds, and all such deposits made by unsuccessful bidders shall at once be returned to them.

It is further adjudged and decreed that the said Commissioner immediately upon making such sale, shall file with the Clerk of this Court his report of all his acts and doings therein, for confirmation by this court, and when his report is confirmed, the said Commissioner shall execute to such purchaser all such deeds of conveyance and transfer as may be necessary to vest in and convey to the said purchaser or purchasers an absolute and unqualified title in and to all the property conveyed by said mortgage and herein ordered to be sold.

It is further adjudged and decreed that the Commissioner executing the decree and making such sale shall apply the proceeds thereof in the following manner:

First. To the payment of all the costs of this cause, including all expenses of making said sale, and of enforcing and carrying out this decree, including the solicitor's fee to the complainant for the foreclosure of said mortgage, which is hereby fixed and determined at the sum of fifteen hundred dollars (\$1500.00).

Second. To the payment of the bonds aforesaid so far as the same can be paid out of the proceeds of said sale, or by the application of the said bonds so offered as a part or whole of the purchase price.

It is further ordered that Geo. F. Henry, be and he is hereby appointed Commissioner to make the sale herein ordered to be made, and to execute this decree to the full extent herein prescribed and he is to make full and immediate report of his doings to this court.

Nov. 7th, 1894.

(Sgd.) JOHN S. WOOLSON, Judge.

EXHIBIT 67.

In the United States Circuit Court, Southern District of Iowa,
Central Division.

The Metropolitan Trust Company of the City of New York,
Trustee,

vs. In Chancery.

Des Moines Northern and Western Railway Company.

Report of Sale.

To the Honorable Judges of said Court in Chancery Sitting:

In pursuance of a decretal order of this Honorable Court, made in the above cause and dated November 7th, 1894, I, the undersigned, Commissioner named in said decree, do report:

That all and singular the mortgaged premises mentioned in the Complainant's bill and in the decree in this cause, were offered for sale by me at public auction at the east door on Court Avenue of the United States Court House, in the City of Des Moines, in said District, on the 15th day of December 1894, at 10:30 o'clock A. M., there being no bidders I adjourned such sale to December 18, 1894, at 10 o'clock A. M.; that previous to such sale I gave public notice of the time and place thereof, by advertisement containing a brief description of such premises, published in the Iowa State Register, a newspaper published at Des Moines, in the County of Polk, State of Iowa, and District aforesaid, for four consecutive weeks, the last publication being more than five days before such sale. I also

posted copies of said notice and caused to be served copies of the same upon the defendant company. A copy of said notice, with affidavit of publication, is hereto attached, marked "Exhibit A" and made a part of this report.

A copy of the notice so as above posted and served upon the defendant company, together with the return of service thereon, is hereto attached and made a part of this report, marked "Exhibit B".

That at such adjourned sale, December 18, 1894, the said property was offered for sale and was struck off as follows: G. M. Dodge, F. M. Hubbell and F. C. Hubbell, Purchasing Committee, having first deposited with me \$5000. in the bonds of the defendant company, bid for the property described in said decree the sum of \$2,840,000 (Two Million, Eight Hundred and Forty Thousand Dollars) and this being the only bid received I declared such property sold to said parties for said sum, the following being a description of the property:

All the property, rights, franchises and interests of the defendant railway company, to-wit: Its line of railroad extending from Farnham Street, in the City of Des Moines, Polk County, Iowa, through the counties of Polk, Dallas, Guthrie, Greene, Calhoun and Pocahontas, to Fonda, in the said last named county, and also extending from Clive in the County of Polk, through the said county to Boone, in the county of Boone and state of Iowa, together with all its real estate necessary for and used in the operation of said lines of railroad, its rights of way, roadbed, bridges, tracks, side-tracks, turn-outs, switches, buildings and structures, water tanks and fixtures, shops, engine and other houses, turntables engines cars and machinery; also together with all its franchises, rights, privileges and immunities, rents, issues, tolls and earnings owned by it at the time of the entry of the decree; also a one-fourth interest in the capital stock of the Des Moines Union Railway Company and all its appurtenant railroad property,

and such parties will be entitled to a deed for such property upon approval of this report and compliance with the decree as to payment of the bid made by them.

All of which is respectfully submitted.

Des Moines, Iowa, December 18, 1894.

(Sgd.) GEO. F. HENRY,
Commissioner of said Court.

Endorsed: Filed Dec. 19, 1894. Ed. R. Mason, Clerk.

EXHIBIT 68.

In the Circuit Court of the United States in and for the
Southern District of Iowa, Central Division.

The Metropolitan Trust Company of the City of New York,
Complainant,

vs. In Equity.

Des Moines, Northern & Western Railway Company,
Defendant.

Decree.

This cause coming on to be heard this 7th day of February 1895, being one of the days of the October Term, 1894, of said Court, upon the report of George F. Henry, Esq., a commissioner heretofore duly appointed to sell the property described in the decree of foreclosure heretofore entered herein which report was filed December 19th 1894, A. B. Cummins appearing for the Complainant, and the defendant appearing by its President, F. M. Hubbell, and the Court having examined the report of sale filed by said Commissioner, and finding that the notice of said sale was duly given as heretofore provided, and that the said sale was in all respects duly and legally had and conducted, and that no exception has been filed to said report,

It is now ordered, adjudged and decreed that the said sale of the property described in said decree of foreclosure to G. M. Dodge, F. M. Hubbell and F. C. Hubbell, Purchasing Committee, be and the same is hereby confirmed and approved, and the said George F. Henry, Commissioner, upon the payment to him of all costs as hereinbefore provided, is authorized and directed to make and execute to said G. M. Dodge, F. M. Hubbell and F. C. Hubbell, Purchasing Committee, a deed of conveyance, which shall convey to them all the right, title and interest of the said Des Moines, Northern & Western Railway Company in or to the said property so sold as held by said Railway Company at the time of the execution of the mortgage herein foreclosed, together with all property subsequently acquired by said Railway Company.

It is further ordered, adjudged and decreed that said Purchasing Committee now holds all the bonds, with their coupons, issued under and secured by said Trust Mortgage, and the Commissioner upon the delivery of said deed shall cancel and deposit with the clerk so many of such bonds and coupons as may be used for the purpose of satisfying the bid according to the provisions of said foreclosure decree.

The Court further finds that after said bonds shall be so cancelled there remains due upon said foreclosure decree, together with interest, seventy nine thousand nine hundred seventy one 59/100 Dollars unsatisfied by said sale, and it is thereupon ordered and adjudged that Complainant, as Trustee for all the bond-holders, do have and recover of and from the defendant, the Des Moines, Northern & Western Railway Company the said deficit, being said sum of Seventy nine Thousand Nine Hundred Seventy-one 59/100 Dollars, and that general execution issue therefor and the bonds and coupons representing said amount shall be filed with the clerk for cancellation.

It is further ordered, adjudged and decreed that the Clerk's costs in this suit be taxed at Three Hundred and Fifty Dollars.

It is further ordered that the Commissioner shall file with his further report receipts showing the payment of all the costs and expenses of this proceeding.

(Sgd) JNO. S. WOOLSON, Judge.

Feby. 7, 1895.

EXHIBIT 69.

Geo. F. Henry, Commissioner of the U. S. Circuit Court
to
G. M. Dodge, F. M. Hubbell and F. C. Hubbell, Purchasing
Committee.

Commissioner's Deed.

This Indenture, Made the Eighth day of February in the year of our Lord, 1895, between Geo. F. Henry, Commissioner of the United States Circuit Court, within and for the Southern District of Iowa, dwelling in the City of Des Moines in said District, of the first part, and G. M. Dodge, F. M. Hubbell and F. C. Hubbell, Purchasing Committee, of the second part,

Witnesseth:

Whereas, at a term of the United States Circuit Court for the Southern District of Iowa, held at the City of Des Moines in said District, on the 7th day of November, 1894, it was, among other things, ordered, adjudged and decreed by said Court, in a certain cause then pending in said Court, between the Metropolitan Trust Company, of the City of New York, Trustee, Complainant, and the Des Moines Northern and Western Railway Company, defendant, that the mortgaged premises

mentioned and set forth in complainant's bill, and the decree of said Court, and hereinafter particularly described, be sold by or under the direction of Geo. F. Henry as Commissioner of said Court, the said Commissioner first giving such notice of the time and place of said sale as is required by the terms of such decree; and

Whereas, the said Geo. F. Henry, Commissioner aforesaid, and party of the first part to these presents, in pursuance of the said order and decree of said Court, did, on the 18th day of December, 1894, sell at public auction at the east door on Court Avenue of the United States Court House, in Des Moines, in said Southern District of Iowa, the said mortgaged premises hereinafter particularly described, having first given due notice of the time and place of such sale, as required by the said order and decree of said Court, at which sale the said mortgaged premises, hereinafter particularly described, were struck off to G. M. Dodge, F. M. Hubbell and F. C. Hubbell, Purchasing Committee, for the sum of Two Million, Eight Hundred and Forty Thousand (2,840,000) Dollars, that being the highest sum bidden for the same, and the said Commissioner's report of said sale having been approved by said by said Court, and this deed having been ordered to be made, by a supplemental decree of said Court made February 7, 1895;

Now Therefore, This indenture witnesseth, that Geo. F. Henry, Commissioner as aforesaid, and party of the first part to these presents, in order to carry into effect the said sale so made as aforesaid, in pursuance of the said decree of said Court, and in consideration of the said sum of Two Million Eight Hundred and Forty Thousand (2,840,000) Dollars, paid as provided in the said decree, hath granted, bargained and sold, aliened, released, conveyed and confirmed, and by these presents doth grant, bargain and sell, alien, release, convey and confirm unto the said parties of the second part, and to their heirs and assigns forever, all the right, title, interest, estate and property of said Des Moines Northern & Western Railway Company, as well as the interest of all persons claiming by, through, or under it since the date of the mortgage, to-wit: December 15th, 1891, in and to the following described premises, to-wit:

All the property, rights, franchises and interests of the defendant railway company, to-wit: Its line of railroad extending from Farnham Street, in the City of Des Moines, Polk County, Iowa, through the counties of Polk, Dallas, Guthrie, Greene, Calhoun, and Pocahontas, to Fonda, in said last named county, and also extending from Clive, in the county of Polk,

through the counties of Polk, Dallas and Boone, to Boone, in the county of Boone, and State of Iowa, together with all its real estate necessary for and used in the operation of said lines of railroad, its rights of way, road bed, bridges, tracks, side tracks, turnouts, switches, buildings and structures, water tanks and fixtures, shops, engine and other houses, turn-tables, engines, cars and machinery; also together with all its franchises, rights, privileges and immunities, rents, issues, tolls and earnings owned by it at the time of the entry of the decree; and all of its appurtenant railroad property; also all of the property acquired by said Des Moines Northern & Western Railway Company after December 15, 1891; also a one-fourth interest in the capital stock of the Des Moines Union Railway Company;

To Have and to Hold all and singular the said premises above mentioned and described, and hereby granted and conveyed, or intended so to be, with the appurtenances, unto the said parties of the second part, their heirs and assigns forever.

In Witness Whereof the said Geo. F. Henry, Commissioner as aforesaid, hath hereunto set his hand the day and year first above written.

GEO. F. HENRY,
Commissioner of the U. S. Circuit Court
for the Southern District of Iowa.

State of Iowa,
County of Polk—ss.

On this 15th day of February A. D. 1895, before me Henry H. Griffiths, a Notary Public in and for Polk County, Iowa, personally appeared Geo. F. Henry, Commissioner of the United States Circuit Court, for the Southern District of Iowa, who is personally known to me to be the identical person who signed the foregoing deed as grantor, and acknowledged the same to be his voluntary act and deed for the purposes therein specified.

Witness my hand and seal the day and year above written.

(Notarial seal) HENRY H. GRIFFITHS,
Notary Public in and for Polk County, Iowa.

Filed for Record March 14 1895 at 8:40 o'clock A. M.

ANNIE E. HEPBURN, Recorder.
By Geo. R. Hepburn, Deputy.

EXHIBIT 70.

Articles of Incorporation
of the

Des Moines Northern and Western Railroad Company.

The undersigned hereby associate themselves together as a body corporate under the laws of the State of Iowa relating to corporations for pecuniary profit and for the organization of railway corporations, and do hereby adopt and publish the following Articles of Incorporation.

Article I.

The name of the corporation shall be "Des Moines Northern and Western Railroad Company".

Article II.

The general purposes and objects of the corporation hereby created shall be.

1st. To own, complete, extend, improve, maintain and operate the line of railway heretobefore owned and operated by the Des Moines Northern & Western Railway Company, extending from Farnham Street in the City of Des Moines, Polk County, Iowa, through the counties of Polk, Dallas, Guthrie, Greene, Calhoun and Pocahontas to Fonda in said last named county; also extending from Cliye in the county of Polk through the counties of Polk, Dallas, and Boone, to the city of Boone in said last named county.

2nd. To acquire terminal facilities in the said City of Des Moines and in other cities and towns into or through which its lines may pass, either by purchase, construction or lease and to maintain, extend, improve and operate the same.

3rd. To hold use and enjoy all the corporate and other franchises, rights, privileges, immunities and property of every nature and description which form a part of or are appurtenant or relate to said lines of railway or to the said Des Moines Northern & Western Railway Company.

4th. To acquire either by construction, purchase or lease and to operate lines of railway lateral to or connected with the lines or railway hereinbefore described or to or with either of them.

5th. To acquire either by construction purchase or lease and to operate a line of railway extending from Des Moines in the State of Iowa eastwardly to a point upon the Mississippi River.

6th. To acquire either by construction purchase or lease, and to operate a line of railway extending from Des Moines aforesaid southerly to a point upon the southern boundary of the State of Iowa.

7th. To acquire either by construction, purchase or lease, and to operate a line of railway extending from Des Moines northward to a point upon the northwestern boundary of the State of Iowa.

8th. To acquire either by construction, purchase or lease and to operate a line of railway extending from Fonda northward to a point upon the northern boundary of the State of Iowa.

9th. To acquire either by construction, purchase or lease to operate a line of railway extending from any point upon the line or lines hereinbefore described westwardly to a point upon the western boundary of the state of Iowa.

10th. To acquire either by construction, purchase or lease, and to operate extensions of such lines of railway, or either of them, in other States.

11th. To acquire either by construction, purchase or lease, and to operate railway bridges over navigable rivers and waterways, when necessary to the extension or connection with any of the lines of railway hereinbefore mentioned.

12th. To purchase, own, and sell capital stock of the Des Moines Union Railway Company, or any other company owning or operating terminal grounds, tracks or stations; Also capital stock or any coal, stone or elevator company doing business upon its lines of railway or either of them.

13th. To acquire, purchase, own, lease, sell or operate coal mines stone quarries and elevators upon adjacent or proximate to the several lines of railway or either of them.

Article III.

The corporation hereby created shall have and possess all the powers granted by the laws of the state of Iowa to railway corporations.

It shall have the power to receive, hold use and enjoy all franchises, privileges, immunities and property heretofore held possessed exercised or enjoyed by the said Des Moines, Northern & Western Railway Company, and all such other powers as may be necessary to the accomplishment of the purposes and objects declared in the second article hereof, and which it may legally assume and exercise in each of the several states in which any part of the railroads which it shall own or operate

is or may be situated or into which any of its railroads may be lawfully extended.

It shall have the power to renew or extend in such manner as may be provided by law its own corporate being, existence and franchises.

It shall have the power to sue and be sued under its corporate name; to have a corporate seal and alter the same at its pleasure; to do any act or transact any business which a common carrier of persons and property may lawfully do; to make contracts, acquire and transfer property, execute mortgages and issue mortgage bonds to establish by-laws and make such rules and regulations as it may deem necessary for the proper management of its business.

Article IV.

The capital stock of the corporation hereby created shall be Eight Million Dollars (\$8,000,000.00), and shall be divided into shares of the par value of One Hundred Dollars (\$100.00) each. Forty-three thousand seven hundred and twenty-five (43,725) shares of such capital stock, aggregating a par value of Four Million Three Hundred and Seventy-two Thousand Five Hundred Dollars (\$4,372,500.00) may be issued in part consideration for the railway property heretofore owned by the Des Moines Northern & Western Railway Company, the remaining consideration therefore being payable in first mortgage bonds to be issued by the corporation, and when such capital stock is so issued it shall be full paid and non-assessable, it being agreed by the incorporators, and by all persons who shall deal with the corporation hereby created, that the purchase price of the said railway property is Seven Million, Two Hundred and Eighty-seven Thousand Five Hundred Dollars (\$7,287,500.00) payable as follows, to-wit: Two Million Nine Hundred and Fifteen Thousand Dollars (\$2,915,000.00) in the first mortgage bonds of this company and Four Million Three Hundred and Seventy-two Thousand Five Hundred Dollars (\$4,372,500.00) par value of its capital stock.

All other capital stock that may be issued by the corporation shall be paid for at par either in money or property at the time certificates therefor are issued.

Article V.

The affairs and business of the corporation shall be conducted and controlled by a Board of Directors consisting of seven persons to be elected by the stockholders from their own number at their regular annual meeting in each year. Said Directors shall hold their offices for one year or until their

successors are duly elected and qualified. Vacancies in the Board by removal, resignation, death or otherwise than by the expiration of the term of office, shall be filled by the Board, and the manner thereof may be regulated in the By-laws. Ceasing to be a stockholder in the corporation shall be held to be a resignation as Director.

Article VI.

The executive officers of the corporation shall consist of a President, two Vice-Presidents, a Secretary and a Treasurer. Said officers shall be elected by the Directors at their first meeting after the annual meeting of stockholders, they shall hold their offices for one year and until their successors are elected and qualified, and they shall have such powers and perform such duties as usually pertain to their respective offices, and such as may be conferred or imposed upon them in the by-laws or by resolution of the Board of Directors. All vacancies in such offices shall be filled by the Board of Directors.

Article VII.

The Board of Directors is specially empowered as follows, to-wit:

1st. To adopt By-laws and resolutions providing for the appointment of such managers, superintendents, employes and other officers not hereinbefore named as may be deemed necessary for the transaction of the business of the corporation, and prescribing such additional rules and regulations as may be deemed proper for the transaction of the business and protection of the interest of the corporation.

2nd. To exercise all the powers of the corporation which are not in these Articles or by the statute reserved or designated to be exercised by the stockholders.

3rd. To appoint an Executive Committee, which shall consist of the President and two directors, and invest it with all the powers of the Board when the latter is not in session.

4th. To elect officers and fill vacancies as hereinbefore provided.

Article VIII.

The annual meeting of the stockholders shall be held on the first Thursday in January of each year at the office of the corporation in Des Moines, Iowa, and the first of such meetings shall be held on the first Thursday of January 1896, but special meetings of the stockholders shall be called by the Secretary at any time upon the written request of the President or three Directors or stockholders holding one-third of the cap-

ital stock then issued. Ten days' notice of any such special meeting shall be given to each stockholder by mailing such notice to him addressed to his last known place of residence.

Article IX.

Immediately after the adjournment of each annual meeting of the stockholders the newly elected Board of Directors shall meet for the purpose of electing officers as aforesaid and the transaction of other business, and it shall hold such other meetings, whether regular or special, as shall be provided in the by-laws.

Article X.

The principal office of the corporation for the transaction of its business shall be at Des Moines, Polk County, Iowa, but the Board of Directors may establish such other offices and financial agencies in other states, places and counties as it may deem proper for the convenient and economical management of the affairs of the corporation.

Article XI.

At all meeting of the stockholders each stockholder shall be entitled to cast one vote for each share of stock which upon the books of the company may appear to be held and owned by him. Such vote may be cast either in person or by proxy but if by proxy, written authority therefor, must be filed with the Secretary before the meeting convenes. The shares of capital stock shall be transferable, but no transfer shall be valid or entitle the transferee to vote in any meeting until the same has been entered upon the proper books of the company at the time and in the manner prescribed in the by-laws.

Article XII.

It shall not be necessary in order to enable the corporation to carry on the business for which it is organized that all of its authorized capital stock be subscribed, taken or issued.

Article XIII.

The highest amount of indebtedness or liability to which the corporation shall at any time subject itself shall not exceed two-thirds of the par value of its outstanding capital stock.

Article XIV.

The private property of the stockholders shall be exempt from the debts of the corporation.

Article XV.

The corporation shall commence on the 1st day of January 1895, and continue for a period of fifty years, or the longest period which it may continue under the laws of the State of Iowa, and it may be renewed from time to time as shall be provided by the statutes in said State of Iowa.

Article XVI.

These articles may be amended at any annual meeting of the stockholders or at any special meeting called for that purpose, by a vote of two-thirds of the shares of the capital stock then issued or outstanding.

Article XVII.

Until the election of a board of directors of the first annual meeting of the stockholders to be held on the first Thursday of January 1896, the Board of Directors shall consist of A. B. Cummins, H. D. Thompson, A. N. Denman, Carroll Wright, J. P. Hewitt, C. Huttenlocher & J. C. Cummins. Said board shall as soon as practicable elect the officers hereinbefore named, who shall hold their offices until their successors are elected at the first meeting of the Directors to be held after the first annual meeting of the stockholders, and the Board herein appointed shall have all the powers conferred upon or vested in the Board of Directors of this corporation.

In witness whereof we have hereunto set our hands this 1st day of January 1895,

A. B. CUMMINS,
H. D. THOMPSON,
CARROLL WRIGHT,
J. P. HEWITT,
A. N. DENMAN,
J. C. CUMMINS.

State of Iowa,
Polk County—ss.

Be it remembered That on this 1st day of January 1895, before me, a notary public in and for the county of Polk and State of Iowa, personally appeared A. B. Cummins, H. D. Thompson, A. N. Denman, Carroll Wright, J. P. Hewitt, J. C. Cummins, personally to me known to be the identical persons who signed the above and foregoing Articles of Incorporation and severally acknowledged the execution of said instrument to be their voluntary act and deed for the uses and purposes therein expressed.

Witness my hand and notarial seal the day and year last above written.

(Notarial seal)

C. HUTTENLOCHER,
Notary Public, Polk County, Iowa.

Filed for Record March 4th 1895, At 2:32 o'clock P. M.

ANNIE E. HEPBURN,
Recorder.

State of Iowa,
Polk County—ss.

I, Mrs. Frank W. Dodson, Recorder of said County, hereby certify that the foregoing writing is a copy from the original record in my office, and of the whole thereof, and recorded in Book No. 11 page 55.

Dated at Des Moines, Iowa, in said County, this the 30th day of December 1909.

(sgd) MRS. FRANK W. DODSON,
Recorder.

EXHIBIT 71

G. M. Dodge, F. M. Hubbell and F. C. Hubbell, Purchasing
Committee,
to
Des Moines Northern & Western Railroad Company.
Deed.

Know all Men by the Presents: That G. M. Dodge, of the city, county and state of New York, F. M. Hubbell and F. C. Hubbell, of the City of Des Moines, County of Polk, and State of Iowa, Purchasing Committee, for and in consideration of the issuance and delivery to them of Two Million, Nine-Hundred Fifteen Thousand Dollars par value of the first mortgage bonds and Four Million Three Hundred Seventy Two Thousand, Five Hundred Dollars, par value, of the capital stock of the Des Moines, Northern & Western Railroad Company, a railway corporation organized and existing under the laws of the State of Iowa, do hereby sell and convey unto the said Des Moines, Northern and Western Railroad Company the following described property, to-wit:

A certain line of railroad extending from Farnham Street in the City of Des Moines, Polk County, Iowa, through the counties of Polk, Dallas, Guthrie, Greene, Calhoun and Poca-

bontas to Fonda, in the said last named county, and also extending from Clive in the County of Polk, through the counties of Polk, Dallas, and Boone, to Boone, in the County of Boone and State of Iowa; together with all the real estate necessary for and used in the operation of said lines of railroad, the rights of way, road bed, bridges, tracks, side-tracks, turn-outs, switches, buildings and structures, water-tanks and fixtures, shops, engine and other houses, turn-tables, engines, cars and machinery; also all the franchises, rights, privileges and immunities connected with, appurtenant to, or used in the operation of the railway property hereinbefore described; also all the rents, issues, tolls and earnings now in the possession of the grantors and arising from the use and operation of said property; also a one-fourth interest in the capital stock of the Des Moines Union Railway Company. The intent being to hereby invest the said Des Moines, Northern & Western Railroad Company with the full and absolute title of the said railroad lines as they now exist, with all their appurtenances and incidents, as received by said grantors from a deed of conveyance executed and delivered by Geo. F. Henry, Commissioner of the United States Circuit Court within and for the Southern District of Iowa on the eighth day of February A. D. 1895, to these grantors, which deed of the said Commissioner was made in pursuance of a decree of the said Circuit Court of the United States entered November 7th A. D. 1894, a foreclosure sale had under said decree on the 18th day of December A. D. 1894, and a supplemental decree of said Court entered February 7th A. D. 1895.

To have and hold all and singular the said premises above mentioned and described; and hereby granted and conveyed, or intended so to be, with the appurtenances, unto the said grantee, its successor, successors, or assigns, forever.

It is hereby expressly provided that the above and foregoing sale and conveyance is without the personal warranty of either of said grantors and that the same is intended to pass the title so acquired by them as such purchasing committee.

In Witness Whereof, the said G. M. Dodge, F. M. Hubbell and F. C. Hubbell, composing the Purchasing Committee as aforesaid, have hereunto set their hands the day and year first above written.

G. M. DODGE.....
F. M. HUBBELL.....
F. C. HUBBELL.....

State of New York,
County of New York—ss.

Be it Remembered, that on the 23rd day of February A. D. 1895, before me, a Notary Public in and for the City, County and State of New York, personally appeared G. M. Dodge, to me personally known to be one of the identical persons who signed the foregoing instrument as grantor, and acknowledged the execution thereof to be his free and voluntary act and deed for the uses and purposes therein set forth.

Witness my hand and notarial seal the day and year last above written.

(Notarial seal)

JOHN W. JENNINGS,
Notary Public in and for the
City, County and State of New
York.

Notary Public Kings Co. N. Y.
Certificate filed in New York Co.

State of Iowa,
County of Polk—ss.

Be it remembered that on this 25th day of February A. D. 1895, before me a notary public in and for the county of Polk, and State of Iowa, personally appeared F. M. Hubbell and F. C. Hubbell, to me personally known to be two of the identical persons, who signed the above and foregoing instrument as grantors, and acknowledged the execution thereof to be their voluntary act and deed for the uses and purposes therein set forth.

Witness my hand and notarial seal on the day and year last above written.

(Notarial seal)

G. HUTTENLOCHER,
Notary Public, in and for
Polk County, Iowa.

Filed for record March 14th 1895, at 8:44 o'clock A. M.,

ANNA E. HEPBURN,
Recorder.
By Geo. B. Hepburn, Deputy.

State of Iowa,
Polk County—ss.

I, Mrs. Frank W. Dodson, Recorder of said County, hereby certify that the foregoing writing is a copy from the original record in my office, and the whole thereof, and recorded in Book 263 at pages 533 to 535, inclusive.

Dated at Des Moines, Iowa, in said County, this 10 day of December 1909.

MRS. FRANK W. DODSON,
Recorder.

EXHIBIT 72.

"Stockholders' Meeting (D. M. N. & W. Railroad Co.)

Des Moines, Iowa, January 5, 1899.

Pursuant to Article Eight of the Articles of Incorporation of this Company, the Annual Meeting of the Stockholders was held at the office of the Company in the city of Des Moines, Iowa, at eleven o'clock A. M. of Thursday, the 5th day of January 1899.

The president of the Company acted as President of the meeting and the Secretary of the Company acted as Secretary of the meeting.

The Secretary laid before the meeting the following list of Stockholders of the Company showing the number of shares held by them and each of them, on this day, which list is as follows, to wit:

Chicago, Milwaukee & St. Paul Railway Company	32,994 Shares
Collins, W. G.	1 share
Cummins, A. B.	465 shares
Earling, A. J.	1 share
Goodnow, C. A.	1 share
Manson, Burton	1 share
Hubbell, F. C.	1 shares
Hubbell, F. M.	1 share
Miller, Rosewell	2 shares
Miller, Roswell, Trustee	10,232 shares
Myers, P. M.	1 share
Thompson, H. D.	1 share
Warfield, W. R.	24 shares
Total	43,725 shares

and the roll being called it appeared that there were present in person and by proxy the holders of 43,235 shares out of a total issue of 43,725 shares of the capital stock of the Company.

On motion of Mr. Earling duly seconded, the Secretary was directed to read for the information of the stockholders, the record of the acts and doings of the Board of Directors since

the last Annual Meeting of the Stockholders, and the same having been read it was on motion duly seconded.

Resolved that all the acts and doings of the Board of Directors and of the officers of this Company had and taken since the last annual meeting of the Stockholders as set out in the minutes of the Board, and now read in our hearing, be and the same are hereby in all things ratified, approved and confirmed as the acts and doings of this corporation.

On motion duly seconded, it was Resolved to proceed by ballot to the election of seven (7) Directors to hold their offices for one year, or until their successors are elected and qualified; and that Mr. H. D. Thompson be appointed Teller to receive and count the votes.

And a ballot being taken, the Teller reported that W. G. Collins, A. J. Earling, C. A. Goodnow, Burton Hanson, F. M. Hubbell, F. C. Hubbell and P. M. Myers had each received 43,235 votes, being all the votes cast at said election, and thereupon the President declared the above named gentlemen duly elected Directors of this Company to hold office for the term of one year, or until their successors are elected and qualified.

And there being no further business to come before the meeting the stockholders adjourned sine die.

F. M. HUBBELL, President.

Attest: Cyrus Kirk, Secretary.

EXHIBIT 73.

"Special Meeting of Directors.

Chicago, Illinois, April 24th, 1899.

Pursuant to the call of the President and to notice duly given, a special meeting of the Board of Directors was held at the office of the President, in the Old Colony Building, in this city at 2:30 o'clock P. M. of this day.

And there was present Messrs. Collins, Earling, Goodnow, Hanson, and Myers5.

And absent Messrs. F. M. Hubbell and F. C. Hubbell....2.

The President having taken the chair, the minutes of the last meeting were read and approved.

The President stated to the Board that the Wabash Railroad Company is the holder of five hundred (500) shares of the capital stock of the Des Moines Union Railway Company

and is, together with this company, the signer of two certain contracts with said Des Moines Union Railway Company; one of which contracts is dated the tenth day of May, 1889, and the other the thirty first day of July, 1897, and both relate to the use of the facilities of said Des Moines Union Railway and to the manner of transferring the stock of said Company which may be held either by the Wabash Company or by this Company.

That the Wabash Company has requested this Company and the Des Moines Union Railway Company to sign a written consent permitting the Wabash Company to pledge its stock in and contracts with the Des Moines Union Railway Company to the Continental Trust Company, as trustee of a certain mortgage which said Wabash Company executed to it on or about the first day of January, 1899 to secure certain bonds in said mortgage particularly described.

That this consent was executed by the Des Moines Union Railway Company and by the officers of this Company; and he asked the Board to direct that the consent be entered upon the minutes, and that the act of the officers of this Company in signing it be ratified and approved.

Whereupon, on motion duly seconded, it was unanimously

Resolved, that this Board does hereby ratify and approve, and confirm the action of the President and Secretary of this Company in executing, together with the Des Moines Union Railway Company the following "Consent":—

Whereas, on or about the 10th day of May, 1889, the Des Moines Union Railway Company as party of the first part, entered into a contract with the Des Moines and St. Louis Railroad Company, the Des Moines & Northwestern Railway Company and the St. Louis, Des Moines and Northern Railway Company, as parties of the second part, wherein and whereby said first party granted to said second party the right to use, upon the terms and conditions therein set forth, the tracks, stations and terminal properties of said first party in and near the city of Des Moines, in the State of Iowa, and

Whereas the Des Moines & Northwestern Railway Company and the St. Louis Des Moines and Northern Railway Company have ceased to own or operate the respective railroads that were owned and operated by them at the time said contract was made, and the Des Moines, Northern and Western Railroad Company has become the owner of and now operates the lines of railroad which were formerly owned and operated by the said Des Moines and Northwestern Railway Company and

the St. Louis, Des Moines and Northern Railway Company, and

Whereas on or about the 31st day of July, 1897, said contract was by an agreement of that date, ratified, confirmed and adopted as a contract between said Des Moines Union Railway Company; the Wabash Railroad Company, and the Des Moines Northern and Western Railroad Company; and

Whereas, in a certain mortgage made by the Wabash Railroad Company to the Continental Trust Company of the City of New York dated on or about the first day of January, 1899, the Wabash Railroad Company to secure the bonds in said mortgage described, has granted and conveyed to said Trust Company the "Des Moines and St. Louis Railroad, extending from the City of Des Moines to Albia in the State of Iowa, and all its leasehold rights and privileges to the use and enjoyment of the tracks, stations and terminal properties of the Des Moines Union Railway Company in or near said City of Des Moines, including also the rights and interest of the Wabash Railroad Company in and to said terminal contract, dated the 31st day of July, 1897, and in and to said other contract, dated the 10th day of May, 1889"; and

Whereas, it is provided in said mortgage that both said contracts shall be deposited with and assigned to the Continental Trust Company of the City of New York by the Wabash Railroad Company, and that such assignment of said contracts shall be made with consent of said Des Moines Union Railway Company, and with the consent of said Des Moines, Northern and Western Railroad Company, as the assignee or successor of the Des Moines and Northwestern Railway Company and of the St. Louis, Des Moines and Northern Railway Company; and,

Whereas the Wabash Railroad Company has also in its said mortgage granted and conveyed to said Continental Trust Company of the City of New York, five hundred shares of the capital stock of said Des Moines Union Railway Company of the par value of one hundred dollars each; and

Whereas, it is provided in said mortgage that the Wabash Railroad Company shall deposit with or cause to be delivered to and deposited with said Continental Trust Company of the City of New York duly endorsed in blank said five hundred shares of the capital stock of the said Des Moines Union Railway Company, and shall also file with said Trust Company the consent of the Des Moines Union Railway Company and the consent of the Des Moines Northern & Western Railroad Company to said assignment or mortgage to said Continental Trust

Company of said five hundred shares of the capital stock of the Des Moines Union Railway Company.

Now Therefore in consideration of the premises of the Des Moines Union Railway Company and the Des Moines Northern and Western Railroad Company, and each of them do hereby consent to any assignment that has been made or that may be hereafter made by the Wabash Railroad Company of said two contracts and of its rights under the same to the Continental Trust Company of the City of New York, as provided for in said mortgage and said Des Moines Union Railway Company and said Des Moines Northern and Western Railroad Company have consented and do hereby consent to all assignments or conveyances that have been made, or that may be hereafter made by the Wabash Purchasing Committee to the Wabash Railroad Company or that have been made or may be hereafter made by the Wabash Railroad Company to the Continental Trust Company of the City of New York of said five hundred shares of stock in accordance with the terms of said mortgage and in order to give effect to its provisions.

In testimony whereof the Des Moines Union Railway Company and the Des Moines Northern and Western Railroad Company have hereunto subscribed their corporate names by their respective Presidents and caused these presents to be attested by their corporate seal this 14th day of March, A. D., 1889.

DES MOINES UNION RAILWAY
COMPANY,

By (Sgd.) H. D. Thompson, Vice President.

Attest: (Sgd.) F. M. Hubbell, Secretary.

THE DES MOINES, NORTHERN
& WESTERN RAILROAD CO.,

By (Signed) A. J. Earling, President.

Attest: (Signed) P. M. Myers, Secretary.

The President laid before the Board the following preamble and resolution adopted by the Board of Directors of the Chicago, Milwaukee & St. Paul Railway Company, at their meeting held in the City of New York on the ninth day of March, 1899, which preamble and resolution are as follows:

Whereas, the Des Moines, Northern & Western Railroad Company owns and operates a line of railroad commencing in the city of Des Moines, Polk County, Iowa, and extending thence in a general northwesterly direction via Clive, in said county, to Fonda, in Pocahontas County; and also a line of railroad commencing at Clive and thence extending in a north-

erly direction to Boone in Boone County, all in the State of Iowa, the aggregate length of said lines of railroad being about 150 miles; and

Whereas, the said Des Moines, Northern & Western Railroad Company has issued and there are now outstanding 43,725 shares of One hundred dollars (\$100) each of its capital stock, and its railroad and property are encumbered by a mortgage debt consisting of two thousand nine hundred and thirty three (2,933) bonds of One Thousand Dollars (\$1000) each, due January 1st, 1915 and bearing interest at four per cent (4%) per annum payable semi-annually, both interest and principal payable in gold; and

Whereas, this Company is the owner of 43,724 out of the above mentioned 43,725 shares of capital stock, and of 2,932 out of the above mentioned 2,933 bonds, and has paid therefor the sum of \$2,462,511.95; and

Whereas the lines of railroad of the said Des Moines, Northern & Western Railroad Company intersect and are connected with the Chicago & Council Bluffs Division of the railway of this company at Madrid and at Herndon, in said State of Iowa, and by reason of such connections form a through line reaching the principal cities and towns in said state and states adjacent; and

Whereas, it is for the interest of this Company and of the public that the said lines of the Des Moines, Northern & Western Railroad should be owned and operated by this company, and that to this end, the said Des Moines, Northern & Western Railroad Company should sell and convey and transfer by deed, to the Chicago, Milwaukee & St. Paul Railway Company all its railroad and property and every part thereof, and all its rights, franchises, licenses, privileges and immunities of every kind howsoever derived; and the said Des Moines, Northern & Western Railroad Company is authorized and empowered under the laws of the state of Iowa, to make such sale and to execute and deliver such conveyance as aforesaid;

Now therefore, be it

Resolved, that the Des Moines, Northern & Western Railroad Company be and is hereby requested to sell and convey to this Company all its railroad and property and for this purpose to make, execute and deliver through its proper officers, a good and sufficient deed of conveyance, conveying and transferring to this Company all its railroad and property of every name and nature wheresoever situated and all its rights, franchises, licenses, privileges and immunities of every kind howsoever derived in consideration of the sum of One

Dollar and of the cancellation and surrender by this Company of all the above mentioned mortgage bonds of the Des Moines, Northern & Western Railroad Company, amounting in the aggregate to the sum of \$2,933,000., with interest due thereon, and of the payment of all other lawful debts of said Company; and this Company hereby agrees that, upon the delivery to it of such deed, it will cancel and surrender the said mortgage bonds and will assume and pay all other lawful debts of said Des Moines Northern & Western Railroad Company, and hold said Company free and clear and harmless therefrom; and

Resolved, That the officers of this Company be, and they are hereby authorized and directed to accept such deed for and on behalf of this Company, and to cause the same to be duly recorded, and when so recorded, to be filed with the minutes of title of this Company."

And the same having been read and duly considered, it was on motion duly seconded, unanimously.

Resolved, That the offer of the Chicago, Milwaukee & St. Paul Railway Company to purchase the railroad and property of this Company, as set out in the foregoing preamble and resolutions, be and is hereby accepted; and that the President and Secretary of this Company be, and they are hereby directed to make and execute a proper deed of conveyance, under the seal of this Company, conveying to the Chicago, Milwaukee & St. Paul Railway Company, its successors and assigns, all the railroad and property of this Company of every name and nature wheresoever situated, and all its rights, franchises, licenses, privileges and immunities of every kind howsoever derived, in consideration of the sum of One Dollar, and of the cancellation and surrender by the said Chicago, Milwaukee & St. Paul Railway Company of all the mortgage bonds of this Company now outstanding amounting in the aggregate to the sum of \$2,933,000, with the interest due thereon and of the payment of all other lawful debts of this Company; and

Resolved That a meeting of the stockholders of this Company be called to be held at its office in the City of Des Moines, Iowa, at 12 o'clock noon of Monday, the 8th day of May, 1899; and that these resolutions and said deed be presented to said meeting, and if the same be approved by said Stockholders then the officers of this Company are directed to deliver the deed aforesaid to the said Chicago, Milwaukee & St. Paul Railway Company.

On motion duly seconded, it was unanimously

Resolved, that Article I of the By-Laws be and the same is hereby repealed, and that in place thereof there be inserted:

"Article I".

"At all the meetings of the stockholders, each stockholder shall, as provided in the Articles of Incorporation, be entitled to one vote for each share of stock held and owned by him, as appears by the books of the Company at the time of such meeting".

And there being no further business to come before the Board at this time, on motion, duly seconded, the Directors adjourned sine die.

Attest:

P. M. MYERS, Secy."

EXHIBIT 74.

This Indenture, made this First day of May, in the year of our Lord One Thousand Eight Hundred and Ninety-Nine, by and between the Des Moines, Northern & Western Railroad Company, a corporation of the State of Iowa, party of the first part, and the Chicago, Milwaukee & St. Paul Railway Company, a corporation of the State of Wisconsin, party of the second part—Witnesseth:

Whereas, the Des Moines, Northern & Western Railroad Company now owns and operates a certain line of railroad commencing at the east line of Section Seven (7), Township Seventy-eight (78) north, Range Twenty-four (24) west, in the City of Des Moines, Polk County, Iowa, and thence extending in a general northwesterly direction, via Clive, in said county, through the counties of Polk, Dallas, Guthrie, Greene, Calhoun and Pocahontas, to Fonda, in said last named county; and also a line of railroad extending from Clive, in said county of Polk, through said county to Boone, in the county of Boone; said lines of railroad having an aggregate length of about one hundred and fifty (150) miles, all in the State of Iowa; and

Whereas, said lines of railroad connect with the railroad of the said Chicago, Milwaukee St. Paul Railway Company at Madrid and at Herndon, in said State, and can be operated in connection with said last mentioned railroad conveniently to the public and to the common benefit of both companies, forming a through line reaching the principal cities and towns in said State of Iowa, and States adjacent; and

Whereas, the said Des Moines, Northern & Western Railroad Company, is indebted to divers parties in the amount of Two Million, Nine Hundred and Thirty-three Thousand Dollars of bonds, due January 1st, 1915, and bearing interest at four per

cent. per annum, payable semi-annually, both interest and principal payable in gold; which said bonds are secured by a mortgage of all its railroads, property, and franchises, executed by the said Des Moines, Northern & Western Railroad Company to the Metropolitan Trust Company, of the City of New York, as Trustee, bearing date the first day of January, 1895; and

Whereas, the said Chicago, Milwaukee & St. Paul Railway Company proposes to purchase said railroads, together with all the equipment, rolling stock, and franchises, and all other property of every name and nature, in anywise appertaining thereto, and in payment therefor to take up, pay, cancel and satisfy all of the above mentioned bonds, with the interest due thereon, and also all other lawful indebtedness of said Des Moines, Northern & Western Railroad Company; and

Whereas, the Des Moines, Northern & Western Railroad Company, has, by its Board of Directors, and with the authority and approval of its stockholders, given in the manner prescribed by statute, authorized the sale of all its railroads and all its property and franchises in anywise appertaining thereto, to the Chicago, Milwaukee & St. Paul Railway Company, and has directed this conveyance to be executed on its part by its President and Secretary, and its corporate seal to be affixed thereto by the officers executing the same; and

Whereas, the said Des Moines, Northern & Western Railroad Company is authorized and empowered by the laws of the State of Iowa, to make this conveyance, and the said Chicago, Milwaukee & St. Paul Railway Company, is authorized and empowered by the laws of the States of Wisconsin and Iowa to receive the same;

Now Therefore, in consideration of the premises and of the sum of One Dollar to it in hand paid, the receipt whereof is hereby acknowledged and confessed, and in further consideration of the undertaking and obligation of the said Chicago, Milwaukee & St. Paul Railway Company to take up, pay, cancel and satisfy all of the above mentioned mortgage bonds, with all the accrued interest thereon, and to pay any and all other just debts of the said Des Moines, Northern & Western Railroad Company, the said Des Moines, Northern & Western Railroad Company, party hereto of the first part, does hereby sell and convey unto the said Chicago, Milwaukee & St. Paul Railway Company, party hereto of the second part, its successors and assigns, all and singular the railroad and railway of the party of the first part, commencing at a point in the east line of Section Seven (7), Township Seventy-eight (78) north, Range Twenty-four (24) West, in the city of Des Moines, Polk County, Iowa, and thence extending in a general northwesterly

direction, via Clive, in said county, through the counties of Polk, Dallas, Guthrie, Green, Calhoun and Pocahontas, to Fonda, in said last named county; and also extending from Clive, in the county of Polk, through the counties of Polk, Dallas and Boone, to Boone, in the county of Boone, and State of Iowa, in all, a distance of about one hundred and fifty (150) miles, being the railroads and railways formerly known as the Des Moines, Northern & Western Railroad; including all the railroads, railways, ways, and rights of way; all the depot grounds, and other lands; all the tracks, bridges, viaducts, culverts, turntables, fences, and other structures; all the depots, station-houses, engine-houses, car-houses, freight-houses, wood-houses, coal-houses, elevators and other buildings; and all machine shops and other shops, held or acquired for use in connection with the said railroad, or in connection with the business thereof; including the road-bed, right of way, appurtenances, and all property of every kind and description, belonging or appertaining to the railroads hereby conveyed and heretofore belonging to the said Des Moines, Northern & Western Railroad Company; including also, all locomotives, tenders, cars, and other rolling stock and equipment; and all machinery, tools, implements, fuel, and materials for the constructing, operating, repairing or replacing of said railway or any part thereof, or any of its equipment or appurtenances; and including also all franchises of said Des Moines, Northern & Western Railroad Company connected with or relating to the said railroads, or to the construction, maintenance, use, and operation of the same; together with all and singular the tenements, hereditaments and appurtenances to said premises belonging, and the reversion and reversions, remainder and remainders, tolls, income, rents, issues and profits thereof; and also all the estate, right, title, interest, property, possession, claim and demand whatsoever, as well in law as in equity, of the said Des Moines, Northern & Western Railroad Company, of, in, and to the same, and every part thereof; and also said company's interest, whatsoever the same may be, in and to the line of telegraph extending along the route of said railway, with all the instruments, implements, machinery, furniture and materials for constructing, furnishing or operating the same; and also one-fourth interest in the capital stock of the Des Moines Union Railway Company; it being the intent hereof to convey all the aforesaid railroad lines, with all their appurtenances and incidents, as received by the grantor herein from a deed of conveyance executed and delivered to it by G. M. Dodge, F. M. Hubbell, and F. C. Hubbell, Purchasing Committee, on the eighth day of February, 1895; together with all property, rights, franchises, licenses and privileges of every name

and description, which the said grantor has in any manner acquired since said eighth day of February, 1895.

To Have and to Hold, all and singular, the said premises above mentioned and described and hereby granted and conveyed, or intended so to be, with the appurtenances, unto the said Chicago, Milwaukee & St. Paul Railway Company, party hereto of the second part, and to its successors and assigns forever.

And the said Des Moines, Northern & Western Railroad Company hereby warrants the title to all the above mentioned and described premises against all persons whomsoever, and hereby covenants and agrees to and with the said party of the second part hereto, that it will make, execute and deliver to it all such further deeds and instruments as may be reasonably required by it for the better assuring of the title to the premises hereby conveyed, or intended so to be.

In Witness Whereof, the said Des Moines, Northern & Western Railroad Company has caused there presents to be executed by its President, and its corporate seal to be hereto affixed and attested by its Secretary, the day and year first above written.

(Seal) DES MOINES, NORTHERN & WESTERN
RAILROAD COMPANY,
By A. J. Earling, President.

Attest:
P. M. Myers, Secretary.

State of Wisconsin,
County of Milwaukee—ss.

Be It Known, that on the fifth day of May, A. D. 1895, before me, a Commissioner residing in the State of Wisconsin, duly appointed and commissioned by the Governor of the State of Iowa to administer oaths and take acknowledgments and proofs of deeds to be used and recorded in the State of Iowa, personally came Albert J. Earling, President, and Peter M. Myers, Secretary of the Des Moines, Northern & Western Railroad Company, to me personally known, and known by me to be the identical persons who executed the foregoing instrument, and by me being duly sworn, did each depose and say: That they are respectively President and Secretary of said Company; that the seal affixed to the foregoing instrument is the corporate seal of said company, and was affixed by authority of said company, and that they signed their respective names thereto as President and Secretary by the like authority; and they severally acknowledged the execution thereof to be their voluntary act and deed and the voluntary act

of the said Des Moines, Northern & Western Railroad Company, for the purposes therein expressed.

In Witness Whereof, I have hereunto set my hand and affixed my official seal on the day and year last above written.

(Seal) E. W. ADAMS,
(Revenue Stamps) Commissioner for Iowa, in Wisconsin.
State of Iowa,
Polk County—ss.

Filed for record the 31st day of May, A. D. 1899, at 2:10 o'clock P. M., and recorded in deed Record 295 of Polk County Records.

JOHN P. COOK,
Recorder, Polk County, Iowa.

State of Iowa,
Dallas County—ss.

Filed for record the 31st day of May, A. D. 1899, at 4:55 o'clock P. M., and recorded in Mis Record 146 page 215 of Dallas County Records.

W. J. COLE,
Recorder, Dallas County, Iowa.

State of Iowa,
Guthrie County—ss.

Filed for record the 5th day of June, A. D. 1899, at 1 o'clock P. M., and recorded in Book 97 Page 535 of Deeds of Guthrie County Records.

J. W. BUCKMASTER,
Recorder, Guthrie County, Iowa.

State of Iowa,
Greene County—ss.

Filed for record the 1st day of June A. D. 1899, at 1:15 o'clock P. M., and recorded in Book 49 Page 108 of Greene County Land Deed Records.

GEO. P. MCBURNEY,
Recorder, Green County, Iowa.

State of Iowa,
Calhoun County—ss.

Filed for record the 2 day of June, A. D. 1899, at 8:15 o'clock A. M., and recorded in Book 25 Page 1 of Calhoun County Records.

SAM A. SMITH,
Recorder, Calhoun County, Iowa.

**State of Iowa,
Pocahontas County—ss.**

Filed for record the 2^d day of June, A. D. 1899, at 5:10 o'clock P. M., and recorded in Book 31 page 337 of Pocahontas County Records.

L. E. HANSON,
Recorder, Pocahontas County, Iowa.

**State of Iowa,
Boone County—ss.**

Filed for record the 6th day of June, A. D. 1899, at 10:20 o'clock A. M., and recorded in Book 104 page 499 of Boone County Records.

C. C. OLSON,
Recorder, Boone County, Iowa.

EXHIBIT 75.

Des Moines, Northern & Western Railroad Company.

Stockholders' Meeting.

Des Moines, Iowa, June 12, 1907.

In pursuance of notice duly given, a special meeting of the stockholders of this Company was held in this city at 10 o'clock in the forenoon of this day. Mr. S. H. Vaughan was called to the chair, and the Secretary of the Company acted as Secretary of the meeting.

The Secretary laid before the meeting the written consent of all the stockholders of the Company for the holding of this special meeting.

The roll being called, it appeared there were present in person or by proxy, stockholders representing 43,725 shares, being the entire issue of the capital stock of the Company.

The Secretary laid before the meeting the following preamble and resolution, which had been adopted by the Board of Directors, and moved their adoption:

Whereas, and in the month of May, 1899, pursuant to certain contracts and agreements existing between this Company and the Chicago, Milwaukee & St. Paul Railway Company, certain resolutions were passed, both by the directors and stockholders of this Company, to transfer and convey to the said Chicago, Milwaukee & St. Paul Railway Company, its successors, etc., "all the railroad and property of this Company of every name and nature, wheresoever situated, and all its rights, franchises, licenses, privileges, and immunities of

every kind, howsoever derived;" and that the proper officers of this Company be required and directed to execute a deed in due form of law to effect such conveyance; and

Whereas, it was the intent and purpose of this Company and of said resolutions to convey to the said Chicago, Milwaukee & St. Paul Railway Company its entire tracks and right of way; and

Whereas, through some oversight an error was made in the deed in the description of the track and right of way of this Company, through which error this Company conveyed to the said Chicago, Milwaukee & St. Paul Railway Company "all and singular the railroad and railway of the party of the first part (this Company) commencing at a point in the east line of Section Seven (7), Township Seventy-eight (78) North, Range Twenty-four (24) West, in the City of Des Moines, Polk County, Iowa, and thence extending" etc., when the aforesaid starting point of such description should have been "Sixteenth street" (formerly called Farnham street) in the said City of Des Moines; and

Whereas, by reason of such erroneous description there was omitted from the aforesaid conveyance that part of the tracks, right of way and fixtures of this Company beginning at said Sixteenth street (formerly called Farnham street) and extending to Twenty-eighth street, or Western Avenue, inclusive;

Now Therefore, Be It Resolved, that for the purpose of correcting such error and carrying out the purpose and intent of this Company to convey to the said Chicago, Milwaukee & St. Paul Railway Company its entire property as aforesaid, the President and Secretary of this Company be required and directed to execute and deliver to the Chicago, Milwaukee & St. Paul Railway Company, a deed in due form of law, of that part of the said tracks and right of way omitted as aforesaid, to-wit: That part of said tracks, right of way and fixtures between the said Sixteenth street (formerly called Farnham street) and the said Western Avenue or Twenty-eighth street, inclusive, in the said City of Des Moines.

The stock vote being called for on the adoption of the foregoing preamble and resolution, it appeared that the holders of 43,725 shares, being the entire issue of the capital stock of the Company, had voted in favor of their adoption, whereupon the Chairman declared the same unanimously adopted.

There being no further business to come before the meeting, on motion duly seconded the stockholders adjourned.

E. W. ADAMS,
Secretary.

S. H. Vaughan, Chairman.

EXHIBIT 76.

This Indenture, Witnesseth: That Whereas, the stockholders and directors of the Des Moines, Northern & Western Railroad Company, a railroad corporation organized and existing under and by virtue of the laws of the state of Iowa, at meetings thereof respectively and duly called and held for that purpose, empowered and directed in due form of law, a deed of conveyance to the Chicago, Milwaukee & St. Paul Railway Company, a railroad corporation organized and existing under and by virtue of the laws of the state of Wisconsin, of the right of way, tracks and premises hereinafter described;

Now Therefore, the said Des Moines, Northern & Western Railroad Company, in consideration of the sum of one dollar and other valuable considerations, does hereby convey, release and quitclaim to the said Chicago, Milwaukee & St. Paul Railway Company, its successors and assigns, all that part of its tracks, rights of way and fixtures in the City of Des Moines and State of Iowa, which lies between Sixteenth street (formerly called Farnham street) and Twenty-eighth street, both inclusive.

In Witness Whereof the said Des Moines, Northern & Western Railroad Company has caused these presents to be executed by its President and Secretary, and its corporate seal attached this 19th day of June, 1907.

DES MOINES, NORTHERN & WESTERN
RAILROAD COMPANY,

By A. J. Earling, President.
E. W. Adams, Secretary.

Witness:

Geo. R. Peck,
J. C. Cook.

State of Illinois,

County of Cook—ss.

On this 19 day of June, A. D. 1907, before me appeared Albert J. Earling and E. W. Adams, to me personally known, who being by me duly and severally sworn, did say that he, the said Earling, is the President, and he, the said Adams, is the Secretary of the Des Moines, Northern & Western Railroad

Company, and that the seal affixed to said instrument is the corporate seal of said corporation, and that said instrument was signed and sealed in behalf of said corporation by authority of its Board of Directors; and the said Earling and the said Adams severally acknowledged said instrument to be the voluntary act and deed of said corporation.

(Notarial Seal)

W. D. MILLARD,
Notary Public, Cook County, Illinois.

My commission expires May 11", 1908.

Filed for record, June 27, A. D. 1907, at 11:16 o'clock A. M.

Des Moines, Northern & Western Railroad Company to Chicago, Milwaukee & St. Paul Railway Company. Deed.

Plaintiffs Exhibit 77.

Trust Conveyance and Convention.

Frederick M. Hubbell and Frances E. Hubbell, his wife
to and with

Frederick M. Hubbell, Frederick C. Hubbell and Grover C. Hubbell, Trustees of the Frederick M. Hubbell, Estate.

Whereas, Frederick M. Hubbell, otherwise known as F. M. Hubbell, and Frances E. Hubbell, husband and wife, of the City of Des Moines, Polk County, Iowa, are the owners of considerable property, both real and personal, the title of which stands either in the name of Frederick M. Hubbell, or of F. M. Hubbell, or of Frances E. Hubbell, situated and located in said Polk County, and elsewhere, and,

Whereas, Said Frederick M. Hubbell and Frances E. Hubbell are the parents of three children, viz.: Frederick C. Hubbell and Grover C. Hubbell, now residents of said City of Des Moines, Polk County, Iowa, and Beulah C. Wachtmeister, who now resides in the City of Paris, France, and,

Whereas, Owing to the nature of their property, to their frequent absence from home, and for various other reasons, it is deemed advisable by the said Frederick M. Hubbell and Frances E. Hubbell to name and appoint trustees of a portion of their property, with certain powers and duties: Now therefore,

Know All Men By These Presents: That, for and in consideration of the sum of One (1) Dollar in hand paid, and other good considerations, the said Frederick M. Hubbell and Frances E. Hubbell, jointly and severally, agree to and do hereby sell, assign, transfer and convey unto the said Frederick

M. Hubbell, Frederick C. Hubbell and Grover C. Hubbell, as trustees of the Frederick M. Hubbell Estate, hereinafter called "trustees," and to their successors in trust, all of the property listed and described in the Schedules hereto attached, hereby referred to and made a part hereof, marked "Schedule A. Real Property; not to be sold;" "Schedule B. Real Property, which may be sold," and "Schedule C. Personal Property," and all other property which the said Frederick M. Hubbell and Frances E. Hubbell, or either of them, may hereafter sell and convey, or cause to be sold and conveyed, unto said "trustees;" together with, all and singular, the rents, issues and profits thereof, and rights of homestead, dower and statutory thirds, and all other rights, appendent and appurtenant, in and unto said property belonging.

In Trust, however, for the persons and purposes hereinafter named and appointed, and with the powers and duties herein-after set forth, and none other.

To Have and to Hold the same unto the said Frederick M. Hubbell, Frederick C. Hubbell and Grover C. Hubbell, trustees of the Frederick M. Hubbell Estate, and to their successors in trust, for and during the whole of the period hereinafter described and designated as "the trust period."

Article I. "The trust period," above referred to, is described and designated as follows: It shall commence upon the execution of these presents, and shall continue and exist during the lives of the following named persons, who are each and all now living, viz., Frederick M. Hubbell and Frances E. Hubbell, his wife—hereinafter called "trustors"—Frederick C. Hubbell, Beulah C. Wachtmeister and Grover C. Hubbell—children of the said Frederick M. Hubbell—and Frederick W. Hubbell and James W. Hubbell—sons of the said Frederick C. Hubbell—and during the life of the survivor of said persons, and for twenty-one (21) years thereafter.

Article II. During the whole of "the trust period" aforesaid, said "trustees" shall have full power and authority to demand, sue and receipt for, take and enter into possession of and hold the property listed and described in the schedules hereto attached, under the heading "Schedule A. Real Property; not to be sold," and each and every lot, part and parcel thereof.

They shall have power to lease said property, and to demand, collect, sue and receipt for the rents, issues and profits arising and which may be had therefrom; to bring, maintain and defend actions, both at law and in equity, involving, growing out of, or in any wise affecting said property; to maintain, improve and insure, and to plat and subdivide the same, and to vacate

the plats and subdivisions thereof, as to them may seem to the best advantage of the trust estate.

They shall have power to pay all liens, encumbrances and claims upon and against said property, whether now existing or hereafter created.

They shall have power to sell and convey such portions of said property as to them may seem necessary or proper for party walls, streets, alleys, public places, rights-of-way, depot grounds and other railroad purposes, upon such terms as may seem to them reasonable and right, and to dedicate streets, alleys and public places therein.

They shall have power to contract debts on the faith and credit of said property and to secure said debts by mortgage, bond, or otherwise, for the purpose of improving said property, to the amount of One Hundred Thousand (100,000) Dollars; but they shall have no power to contract debts on the faith and credit of said property, or to secure the same, except for the purpose of improving said property, and the sum total of such indebtedness shall never, at any time, exceed said sum of One Hundred Thousand (100,000) Dollars, exclusive of interest.

They shall have no power to sell or dispose of said property, or any part of it, except for party walls, streets, alleys, public places, rights-of-way, depot grounds, or other railroad purposes, until the expiration of said trust period.

Article III. During the whole of the trust period aforesaid, said trustees shall have full power and authority to demand, collect, sue and receipt for, take and enter into possession of and hold the property listed and described in the schedules hereto attached, under the headings "Schedule B. Real Property, which may be sold," and "Schedule C. Personal Property," and each and every lot, part and parcel thereof.

They shall have power to lease said property, and to demand, collect, sue and receipt for the rents, issues and profits arising and which may be had therefrom; to bring, maintain and defend actions, both at law and in equity, involving, growing out of, or in any wise affecting said property; to maintain, improve and insure, and to plat and subdivide the same, and to vacate the plats and subdivisions thereof, as to them may seem to the best advantage of the trust estate.

They shall have power to pay all liens, encumbrances, and claims upon and against said property, whether now existing or hereafter created.

Further, said trustees shall have full power and authority to sell, assign, transfer, convey and deliver possession of said

property listed and described in said schedules, under the headings, "Schedule B. Real Property, which may be sold," and "Schedule C. Personal Property," or any lot, part or parcel of it, at such prices and upon such terms as to them may seem best, and they shall have power to invest and re-invest the rents, issues, profits and proceeds of sale thereof, in real estate situated in Polk County, Iowa, and in the improvement of said property, and in the improvement of the property listed and described in said schedules, under the heading, "Schedule A. Real Property; not to be sold."

Further, said trustees shall have power to contract debts on the faith and credit of said property listed and described in said schedules "B" and "C"; to mortgage, bond, or otherwise encumber the same, or any part thereof, should the exigencies of the trust so require, and to charge said property with all necessary, proper and reasonable expenses of maintenance, and of administration of the trust hereby created, including reasonable compensation to the trustees while actively engaged in attending to the business and management of the trust.

In short, during the whole of the trust period aforesaid, said trustees shall have full power and authority to manage and control said property in such manner as to them may seem advisable, and shall have, enjoy and exercise all powers and rights over and concerning said property, and the proceeds thereof, as fully and amply as though they were the absolute and unqualified owners of it, excepting only that the net rents, issues, profits and proceeds of sales thereof shall be invested by them only in such real estate and in such manner as is above set forth.

Article IV. In sales of the trust property aforesaid, as herein authorized, or in sales of any part or parcel of it, said trustees shall have power to make and enter into contracts, to execute bills of sale, assignments, deeds of general warranty, and any other necessary or proper form of transfer or conveyance, and to collect the purchase price thereof, and purchasers from them are hereby expressly relieved and exonerated from seeing to the application of the purchase money.

Article V. During the whole of the trust period aforesaid, the homestead of the trustors, to-wit: Lot one (1) of The Polk & Hubbell Park, now within the corporate limits of the City of Des Moines, Polk County, Iowa, locally known as "Terrace Hill," described again in said schedule "A", shall be maintained by said trustees from, with and out of the general revenues of the trust. During the lives of the trustors, they, and the survivor of them, shall have the exclusive right to use and occupy said homestead as a home, free of rent, cost or charge; after the death of the trustors, said Frederick C. Hubbell shall

have the exclusive right to so use and occupy said homestead, during his natural life; after the death of said trustors and said Frederick C. Hubbell, said Grover C. Hubbell shall have the exclusive right to so use and occupy said homestead, during his natural life, and, after the death of said trustors, said Frederick C. Hubbell and said Grover C. Hubbell, the right to so use and occupy said homestead shall vest in said Frederick W. Hubbell and James W. Hubbell, for their natural lives, in succession, and in the order named, and so on in the next oldest male lineal descendant of the trustors; the intention of the trustors being that said "Terrace Hill" shall be maintained by said trustees with and from the general revenues of the trust and shall be and remain the homestead of the Hubbell family, and in the possession of the eldest male lineal descendant of the trustors, so long as any such descendant exists, during the whole of the trust period aforesaid.

Article VI. For and during the natural life of the said Frederick M. Hubbell, the net income of and from the trust property and estate above described shall be paid by said trustees to him, the said Frederick M. Hubbell, either annually, semi-annually, quarterly or monthly, as he may desire and request.

Article VII. At and after the death of said Frederick M. Hubbell should the said Frances E. Hubbell survive him, said trustees shall pay to the said Frances E. Hubbell, out of and from the net income of the trust property and estate aforesaid, for and during her natural life, the sum of Eighteen Thousand (18,000) Dollars each year, the same to be paid her monthly, in installments of Fifteen Hundred (1,500) Dollars each.

Article VIII. At and after the death of said Frederick M. Hubbell, the net income of and from the trust property and estate aforesaid, after the payment of the annuity, above raised and provided, to the said Frances E. Hubbell, shall, during the remainder of the trust period aforesaid, be paid by said trustees, either annually, semi-annually, quarterly or monthly, as to said trustees may seem best as follows: One-third ($1/3$) to the said Frederick C. Hubbell, and to the heirs of his body; one-third ($1/3$) to the said Beulah C. Wachtmeister, and to the heirs of her body, and one-third ($1/3$) to the said Grover C. Hubbell, and to the heirs of his body. And, should any of said children of the trustors, viz., Frederick C. Hubbell, Beulah C. Wachtmeister or Grover C. Hubbell, die without leaving heirs of the body, him or her surviving, the one-third ($1/3$) share payable to such child so dying without heirs of his or her body, shall thereafter be paid by said trustees to the surviving children or child of the trustors, and to the heirs of their respective bodies; the intention of this article being that said three children of the trustors and their

lineal descendants, and no one else, shall, after the death of the said Frederick M. Hubbell, and subject to the provisions of Article VII. hereof, take, have and enjoy the net income of and from the trust property and estate aforesaid, and that such lineal descendants shall take per stirpes and not per capita.

Article IX. The trustees of the trust hereby created shall not be less than three, nor more than five, in number, and should their number at any time, as a result of death, resignation, or removal for non-feasance or misfeasance in office, be reduced below the number of three, the remaining trustees may appoint another person to fill the vacancy, by an instrument, in writing, signed and acknowledged by them, and recorded in the office of the recorder of Polk County, Iowa. In case the surviving trustees do not agree upon the appointment of a new trustee to fill such vacancy, within thirty (30) days after a vacancy occurs, any one of the trustees, or any one of their *cestuis que trustent* may apply to the District Court of Iowa, in and for Polk County, or to any court of competent jurisdiction, for the appointment of a new trustee hereunder to fill such vacancy. And the new trustee, so named or appointed, shall, conjointly with his co-trustees, be vested and burdened with all of the powers, rights and duties by these presents granted to and imposed upon the said Frederick M. Hubbell, Frederick C. Hubbell and Grover C. Hubbell, Trustees of the Frederick M. Hubbell Estate, without further conveyance or assurance.

Article X. So soon as said grandchildren of the trustors, viz., Frederick W. Hubbell and James W. Hubbell, respectively, reach the age of twenty-one (21) years, they, and each of them, shall be and become trustees of the trust property and estate hereby created, conjointly with the then trustees of said trust property and estate, and shall be vested and burdened with all of the powers, rights and duties granted to and imposed upon the grantees hereof, without further conveyance or assurance, and subject to all of the provisions of this Trust Conveyance and Convention.

Article XI. Should any of the *cestuis que trustent* herein named and appointed, at any time during the continuance of the trust period aforesaid, become dissipated, or spendthrifts, bankrupts or insolvent, or unable to pay their just debts, or should any creditors of any of said *cestuis que trustent* attempt to garnish, attach, levy upon or sequester, or reach, by any process, writ or judicial proceeding, the revenues and income derivable from the trust hereby created, or should any of said *cestuis que trustent* attempt, in any way, to pledge, mortgage, encumber, dispose of or anticipate the revenues or income coming to him hereunder, or any part thereof, said trustees may, in the exercise of their sound discretion, stop and withhold payment of the

revenues or income of such cestui que trust, so long and to such extent as to them may seem best, and the revenues and income so withheld shall go and enure to the benefit of the trust property and estate, and be and become of the corpus thereof.

Article XII. In the making of contracts and the execution of all instruments in writing, transferring, conveying, or in any wise affecting said trust property and estate; in all matters involving judgment, discretion and policy, and in the control and management of said trust, a majority of the trustees may act and shall control.

Article XIII. The official signatures of said trustees to all instruments in writing shall be

"Trustees of the Frederick M. Hubbell Estate,
By"

followed by the signatures of said trustees, or a majority of them, but leases for terms not exceeding five (5) years, checks, drafts, receipts and vouchers may be signed by such person or persons as may be named and designated by said trustees for this purpose.

Article XIV. In the administration of the trust aforesaid, and in the accounting for and distribution of it, said trustees shall be held only to ordinary care and faithfulness, and shall in no wise be held liable or accountable for errors in judgment.

Article XV. At the expiration of the trust period hereby created, said trustees shall account for, pay over, distribute among and convey to the lineal descendants of the said Frederick C. Hubbell, Beulah C. Wachtmeister, and Grover C. Hubbell, then living, the trust property and estate then remaining in the hands and under the control of said trustees; said lineal descendants to take per stirpes and not per capita.

Article XVI. If at any time after the death of the said Frederick M. Hubbell and Frances E. Hubbell, no lineal descendant of the trustor, Frederick M. Hubbell, should be in existence, capable of inheriting, the trust property and estate aforesaid shall go to and vest in the State of Iowa, to be used by it in the founding, erection and maintenance of a College of Learning in the City of Des Moines, Polk County, Iowa, and said trustees shall account for, pay over and convey to the said State of Iowa, for said purpose, the trust property and estate then remaining in their hands and under their control.

Article XVII. This Trust Conveyance and Convention is made to correct certain errors and omissions in and of the Trust Declaration and Conveyance made by the grantors hereof to the grantees hereof, dated September 15, A. D. 1903, and recorded

in Book 455, at pages 555 et seq., of the records of the office of the recorder of Polk County, Iowa, and wherever the two instruments conflict, or differ, and in the interpretation and enforcement of the same, this, the latter, shall control and prevail.

In Witness Whereof, the grantors above named, and each of them, have hereunto subscribed their names and affixed their seals, and the trustees above named, and each of them, to evidence their acceptance or the trust hereby created, have hereunto subscribed their names, at the City of Des Moines, Polk County, Iowa, this 31st day of December, A. D. 1903.

(Seal)

FREDERICK M. HUBBELL.

(Seal)

FRANCES E. HUBBELL.

FREDERICK M. HUBELL,
FREDERICK C. HUBBELL,
GROER C. HUBBELL.

Trustees of the Frederick M. Hubbell Estate.

State of Iowa,
Polk County—ss.

Be it Remembered: That on this, the 31st day of December, A. D. 1903, in the County and State aforesaid, before me, the undersigned, a Notary Public, in and for said County, personally appeared Frances E. Hubbell, Frederick C. Hubbell and Grover C. Hubbell, each and all personally known to me; the said Frances E. Hubbell personally known to me to be the wife of Frederick M. Hubbell and to be the identical person of said name who signed the above and foregoing Trust Conveyance and Convention as one of the grantors, and the said Frederick C. Hubbell and Grover C. Hubbell personally known to me to be the identical persons of said names who signed the above and foregoing Trust Conveyance and Convention as two of the Trustees of the Frederick M. Hubbell Estate, and the said Frances E. Hubbell, Frederick C. Hubbell and Grover C. Hubbell then and there severally acknowledged the signing and execution of said instrument to be their volutary acts and deeds, for the uses and purposes therein set forth.

In Witness Whereof, I have hereunto subscribed my name and have hereto affixed my Notarial Seal, at the City of Des Moines, in the County and State aforesaid, on the day and year last above written.

(Seal)

C. HUTTENLOCHER,
Notary Public.

State of Texas,

Jefferson County—ss.

Be it Remembered: That on this, the 18th day of January, A. D. 1904, in the County and State aforesaid, before me, the undersigned, a Notary Public, in and for said County, personally appeared Frederick M. Hubbell, personally known to me, and personally known to me to be the identical person of said name who signed the above and foregoing Trust Conveyance and Convention as one of the grantors and as one of the trustees of the Frederick M. Hubbell Estate, and then and there acknowledged the signing and execution of said instrument to be his voluntary act and deed, for the uses and purposes therein set forth.

In Witness Whereof, I have hereunto subscribed my name and have hereto affixed my Notarial Seal, at the City of Beaumont, in the County and State aforesaid, on the day and year last above written.

(Seal)

R. E. BUMPAS,
Notary Public, Jefferson County, Texas.

"Schedule A. Real Property; Not to be Sold."

Each and all of the following described lots, parcels of land, additions, subdivisions, towns, sections and estates, parks, places, plats and re-plats situated within the corporate limits of the City of Des Moines, in Polk County, Iowa, to-wit:

Allen's Addition.

Item 1. Lot four (4) in Block one (1) of Allen's Addition to the City of Des Moines.

Item 2. Lot seven (7) in Block one (1) of Allen's Addition to the City of Des Moines.

Bird's Addition, and Thereabouts.

Item 3. Lots five (5) and six (6) in Block three (3) of Bird's Addition to the City of Des Moines.

Item 4. The South Half ($\frac{1}{2}$) of Lot three (3), in Block four (4) of Bird's Addition to the City of Des Moines.

Item 5. The West Half ($\frac{1}{2}$) of Lots one (1) and two (2), ascertained by drawing a straight line from the middle of the North line of said Lot one (1) to the middle of the South line of said lot two (2), the whole of Lot three (3), and the West forty (40) feet of Lot four (4), all in Block five (5) of Bird's Addition to the City of Des Moines.

Item 6. All that part of Lot thirteen (13) which lies North of Grand Avenue, and all of Lot four (4), excepting so much

of said Lot four (4) as lies in Grand Avenue, and excepting the South twenty-eight (28) feet of the North one hundred and eleven (111) feet thereof, of the Official Plat of the North East Quarter ($\frac{1}{4}$) of the South East Quarter ($\frac{1}{4}$) of Section four (4), Township seventy-eight (78), Range twenty-four (24), West of the 5th P. M. Iowa.

Campbell & McMullen's Addition, and Thereabouts.

Item 7. Lot one (1) in Block twenty-five (25) of Campbell & McMullen's Addition to the town of Fort Des Moines.

Item 8. The East Half ($\frac{1}{2}$) of Lots one (1) and two (2) in Block twenty-six (26) of Campbell & McMullen's Addition to the town of Fort Des Moines.

Item 9. Lot six (6) in Block twenty-six (26) of Campbell & McMullen's Addition to the town of Fort Des Moines.

Item 10. The West Half ($\frac{1}{2}$) of Lots seven (7) and eight (8) in Block twenty-six (26) of Campbell & McMullen's Addition to the town of Fort Des Moines.

Item 11. The East Half ($\frac{1}{2}$) of Lot three (3) in Block twenty-seven (27) of Campbell & McMullen's Addition to the town of Fort Des Moines.

Item 12. Lot three (3) in Block thirty-seven (37) of Campbell & McMullen's Addition to the town of Fort Des Moines.

Item 13. Lots two (2) and three (3) in Block fifty-six (56) of Campbell & McMullen's Addition to the town of Fort Des Moines.

Item 14. Lot ten (10), except that portion thereof heretofore appropriated by the City of Des Moines as a part of Fourteenth Street, of the Official Plat of the South West Quarter ($\frac{1}{4}$) of Section four (4), Township seventy (78), Range twenty-four (24), West of the 5th P. M. Iowa; also Lot one (1) and the undivided one-half ($\frac{1}{2}$) of Lot three (3) of the Official Plat of Lot five (5) of Block fifty-six (56) of Campbell & McMullen's Addition and of Lot nine (9) of the Official Plat of the South West Quarter ($\frac{1}{4}$) of Section four (4), Township seventy-eight (78), Range twenty-four (24), West of the 5th P. M. Iowa.

Item 15. Lots one (1), two (2), three (3) and four (4) of the Official Plat of Lot three (3), in Block fifty-seven (57) of Campbell & McMullen's Addition to the town of Fort Des Moines.

Item 16. Lot four (4) in Block fifty-seven (57) of Campbell & McMullen's Addition to the town of Fort Des Moines.

Item 17. Lot six (6) in Block fifty-seven (57) of Campbell & McMullen's Addition to the town of Fort Des Moines, except

the following described lot or parcel of land, viz., beginning at a point on the East side of the said lot six (6) which is fifty-four and twenty-four hundredths (54.24) feet North of the South East corner thereof; thence running Westerly to the North West corner of said lot six (6); thence East on the North line of said lot six (6) to the North East corner thereof; thence South on the East side of said lot to the place of beginning, which was conveyed to the City of Des Moines, on February 2, 1892, for the purpose of an alley.

Item 18. The East Half ($\frac{1}{2}$) of Lot two (2) in Block fifty-eight (58) of Campbell & McMullen's Addition to the town of Fort Des Moines.

Item 19. Lot four (4) in Block fifty-nine (59) in Campbell & McMullen's Addition to the town of Fort Des Moines, excepting a strip of ground five (5) feet wide off from the North end of said Lot four (4), conveyed to the City of Des Moines for the purposes of an alley.

Item 20. The West Half ($\frac{1}{2}$) of Lot nine (9) of the Official Plat of Lots two (2) and three (3) in Block fifty-nine (59) of Campbell & McMullen's Addition to the town of Fort Des Moines together with Lots two (2) and three (3) in Block six (6) of Holcomb's Addition to Fort Des Moines, excepting the North nine (9) feet of said Lot nine (9).

Item 21. Lot five (5) in Block sixty (60) of Campbell & McMullen's Addition to the town of Fort Des Moines.
Holcomb's Addition.

Item 22. Lots five (5) and six (6) in Block three (3) of Holcomb's Addition to Fort Des Moines.

Item 23. Lot three (3) in Block (5) of Holcomb's Addition to Fort Des Moines.

Item 24. Lot one (1) in Block six (6) of Holcomb's Addition to Fort Des Moines.

Item 25. Lots one (1), and two (2) of the Official Plat of Lots two (2) and three (3) in Block two (2) of Holcomb's Addition to Fort Des Moines; also so much of Lot one (1) of the Official Plat of the South West Quarter ($\frac{1}{4}$) of Section four (4), Township seventy-eight (78), Range twenty-four (24) West of the 5th P. M. Iowa, as lies East of the alley which runs North and South through said Block two (2).

Coliseum Place.

Item 26. Lots one (1), two (2) and three (3) in Coliseum Place.

C. Good's Central Addition, and Thereabouts.

Item 27. Lot one (1) in Block one (1) of C. Good's Central Addition to the City of Des Moines, and so much of Lot sixteen (16) of the Official Plat of the North East Quarter ($\frac{1}{4}$) of the South East Quarter ($\frac{1}{4}$) of Section four (4), Township seventy-eight (78), Range twenty-four (24) West of the 5th P. M. Iowa, as lies North of Grand Avenue.

Item 28. The West Half ($\frac{1}{2}$) of Lot four (4) and the East thirty-five (35) feet of Lot five (5) in Block one (1) of C. Good's Central Addition to the City of Des Moines.

Fort Des Moines.

Item 29. The East Half ($\frac{1}{2}$) of Lot five (5) and all of Lot six (6) in Block three (3) of Fort Des Moines.

Item 30. Lot three (3) and the North Half ($\frac{1}{2}$) of Lot four (4) in Block eight (8) of Fort Des Moines.

Gatch's Subdivision.

Item 31. Lots one (1), two (2), three (3) and four (4) of Gatch's Subdivision of the North one hundred and thirty-two (132) feet (of all East of alley) of the East Half ($\frac{1}{2}$) of Block "H" of Grimmel's Addition to the town of Fort Des Moines.

Item 32. Lots seven (7), eight (8), nine (9) and ten (10) of Gatch's Subdivision of the North one hundred and thirty-two (132) feet (of all East of alley) of the East Half ($\frac{1}{2}$) of Block "H" of Grimmel's Addition to the town of Fort Des Moines.

Grimmel's Addition, and Official Plats Thereof.

Item 33. That part of Lot eight (8) in Block "H" of Grimmel's Addition to the town of Fort Des Moines described as follows: beginning at the North line of said Lot at a point sixty-six (66) feet Easterly from the North West corner thereof; running thence seventy-two (72) feet to the North East corner of said lot; thence Southerly to the South East corner of said lot; thence Westerly to the South West corner of said lot, and thence Northerly, in a straight line, to the place of beginning.

Item 34. Lots six (6), seven (7), eight (8), nine (9), ten (10), eleven (11), twelve (12), thirteen (13), fourteen (14), fifteen (15), sixteen (16) and seventeen (17) of the Official Plat of the West two hundred and fifty-six (256) feet of the North one hundred and four (104) feet of Lots ten (10), eleven (11) and twelve (12) in Block "I" of Grimmel's Addition to Fort Des Moines; also all the remainder of said lots eleven (11) and twelve (12) of said Official Plat which has not been conveyed to the City of Des Moines for public alley.

Item 35. The South nineteen (19) feet of Lot three (3), and all of Lot four (4) of the Official Plat of Lot fourteen (14) of the Official Plat of Block "I" of Grimmel's Addition to Fort Des Moines together with Lot seven (7) of C. H. Atkin's Sub-division of Lot thirteen (13) of the Official Plat of said Block "I" of Grimmel's Addition. Also the following: beginning at the South West corner of Lot six (6) in Block "I" of Grimmel's Addition to the town of Fort Des Moines, running thence Northerly, along the East line of Sixth Avenue, thirty-six (36) feet; thence Easterly, at right angles with Sixth Avenue, to the alley as now laid out, vacated and used; thence Southerly, on the West line of said alley, thirty-six (36) feet; thence Westerly to the place of beginning, said property comprising all of Lot fifteen (15) and a part of Lot sixteen (16) of the Official Plat of Block "I" of Grimmel's Addition and also a small triangular strip which was formerly a part of the alley, now included in and forming a part of the City of Des Moines.

Item 36. Lot nineteen (19) of the Official Plat of Block "I" of Grimmel's Addition to the town of Fort Des Moines.

Item 37. Lot three (3) in Block "E" of Grimmel's Addition to the town of Fort Des Moines.

Item 38. The North Half ($\frac{1}{2}$) of Lot twenty-five (25) in Division two (2) of Grimmel's Addition to the town of Fort Des Moines.

Item 39. The North Half ($\frac{1}{2}$) of Lot twenty-six (26) in Division two (2) of Grimmel's Addition to the town of Fort Des Moines.

Item 40. Lot two (2) in Division two (2) of Grimmel's Addition to the town of Fort Des Moines.

Item 41. Lot one (1) in Division three (3) of Grimmel's Addition to the town of Fort Des Moines.

Hoxie's Addition.

Item 42. Lot four (4) in Block twenty-two (22) of H. M. Hoxie's Addition to the town of Fort Des Moines.

Keene & Poindexter's Addition, and Official Plat Thereof.

Item 43. Lot four (4) in Block twenty-two (22) of Keene & Poindexter's Addition to Fort Des Moines.

Item 44. The South twenty-four (24) feet and two (2) inches of Lot three (3) and four (4) in Block twenty-three (23) of Keene & Poindexter's Addition to Fort Des Moines.

Item 45. Lot seven (7) in Block twenty-three (23) of Keene & Poindexter's Addition to Fort Des Moines, and Fractional Lot seven (7) in Block twenty-three (23) of H. M. Hoxie's Addition to the town of Fort Des Moines.

Item 46. Lot four (4) in Block twenty-four (24) of Keene & Poindexter's Addition to Fort Des Moines.

Item 47. Lots one (1) and two (2) in Block twenty-nine (29) of Keene & Poindexter's Addition to Fort Des Moines.

Item 48. The South eleven (11) feet of Lot ten (10) in Block thirty-three (33) of Keene & Poindexter's Addition to Fort Des Moines.

Item 49. Lots two (2) and four (4) of Keene & Poindexter's Official Plat, as filed for record on April 9, 1897, and recorded in Plat Book "E," Page 116, of Polk County Recorder's Office. (Jonathan) Lyons Addition, and Thereabouts.

Item 50. The West forty-two (42) feet of Lot one (1); the East eight (8) feet of Lot two (2), and the West twenty-five (25) feet of the East Half ($\frac{1}{2}$) of Lot two (2) in Block thirty-seven (37) of (Jonathan) Lyons' Addition to Fort Des Moines.

Item 51. Lot four (4) in Block thirty-seven (37) of (Jonathan) Lyons' Addition to Fort Des Moines.

Item 52. Lot one (1), except the West sixty-six (66) feet, in Block thirty-eight (38) of (Jonathan) Lyons' Addition to Fort Des Moines.

Item 53. Lots one (1) and two (2) in Block thirty-nine (39) of (Jonathan) Lyons' Addition to Fort Des Moines.

Item 54. Lots seven (7), eight (8), nine (9) and ten (10), and all of Lot eleven (11) except the North thirty-three (33) feet thereof, all in Block thirty-nine (39) of (Jonathan) Lyons' Addition to Fort Des Moines.

Item 55. Lots five (5) and six (6) in Block forty-two (42) of (Jonathan) Lyons' Addition to Fort Des Moines, except the right of way over the North twelve (12) feet and over a triangle in the South West corner of said Lots five (5) and six (6) in favor of the Des Moines Union Railway Company, and granted on October 8, 1902, and recorded.

Item 56. The East fifty (50) feet of Lot one (1) and all of Lot four (4) in Block forty-seven (47) of (Jonathan) Lyons' Addition to Fort Des Moines.

Item 57. Lots one (1), two (2), three (3), four (4), five (5), (5) and six (6) of the Official Plat of Lots six (6), seven (7)

and eight (8) in Block thirty-seven (37) of (Jonathan) Lyons' Addition to Fort Des Moines.

Item 58. Lots one (1), two (2), three (3), four (4), five (5), six (6), seven (7), eight (8) and nine (9) of the Official Plat of Lots two ((2) and three (3) in Block forty-four (44) of (Jonathan Lyons' Addition to Fort Des Moines.

Item 59. Lot one (1) of the Official Plat of Lots three (3) and four (4) in Block forty-six (46) of (Jonathan) Lyons' Addition to Fort Des Moines. Also Lot six (6) of the Official Plat of the South East Quarter ($\frac{1}{4}$) of Section five (5), Township seventy-eight (78), Range twenty-four (24), West of the 5th P. M. Iowa. Also, commencing at the South West corner of Lot one (1) of the Official Plat of Lots three (3) and four (4) in Block forty-six (46) of (Jonathan) Lyons' Addition to Fort Des Moines, running thence, in a Westerly direction, on a course which shall be the extension, in a straight line, of the South boundary line of said Lot one (1), until it intersects the East line of Seventeenth Street, as re-located on April 4, 1902; thence North twenty-seven (27) degrees and thirty (30) minutes West, to the South line of Lot one (1) in Block "D" of the Subdivision of Lot six (6) of the Pursley Estate, it being a point nine (9) feet East of the South West corner of said Lot one (1) in Block "D"; thence Easterly, along the South line of said Block "D," to the North West corner of Lot six (6) of the Official Plat of the South East Quarter ($\frac{1}{4}$) of Section five (5), Township seventy-eight (78), Range twenty-four (24), West of the 5th P. M. Iowa; thence Southeasterly, in a straight line, to the place of beginning.

Item 60. Lots one (1), two (2), three (3), four (4), five (5), twenty-three (23), twenty-four (24), twenty-five (25), twenty-six (26), twenty-seven (27), twenty-eight (28), twenty-nine (29), thirty (30), thirty-one (31), thirty-two (32), thirty-three (33) and thirty-four (34) of the Official Plat of Block thirty-six (36) of J. Lyons' Addition and Block five (5) of J. M. Griffith's Subdivision of Lot five (5) of the Pursley Estate to Fort Des Moines.

Item 61. Lot one (1) in Block "D" of the Subdivision of Lot six (6) of thirteen and six-hundredths (13.06) acres of the Pursley Estate, except the North seventy-two (72) feet, and except the South ten (10) feet and the triangle in the South West corner deeded to the City of Des Moines.

The Polk and Hubbell Park.

Item 62. Lot one (1) in the Polk & Hubbell Park, otherwise known as "Terrace Hill."

J. C. Savery's Park Addition.

Item 63. The East twenty-six (26) feet of Lot one (1) in Block one (1) in J. C. Savery's Park Addition.

Item 64. Lot seven (7) in Block one (1) of J. C. Savery's Park Addition.

Item 65. Lots two (2) and three (3) in Block two (2) of J. C. Savery's Park Addition.

West Fort Des Moines, and Thereabouts.

Item 66. Lot two (2) in Block two (2) of West Fort Des Moines, and Lot two (2), in Block twelve (12) of H. M. Hoxie's Addition to the town of Fort Des Moines.

Item 67. The West Half ($\frac{1}{2}$) of Lots three (3) and four (4) in Block two (2) of West Fort Des Moines.

Item 68. The West forty (40) feet of Lots seven (7) and eight (8), except the North thirty-two (32) feet of said Lot seven (7), in Block four (4) of West Fort Des Moines.

Item 69. Lot four (4) in Block five (5) of West Fort Des Moines.

Item 70. The West Half ($\frac{1}{2}$) of Lots five (5) and six (6) in Block five (5) of West Fort Des Moines.

Item 71. Lots five (5) and six (6) in Block six (6) of West Fort Des Moines.

Item 72. Lot forty-three (43) of York's Subdivision of Lot five (5) of the North East Quarter ($\frac{1}{4}$) of Section nine (9), Township seventy-eight (78), Range twenty-four (24), West of the 5th P. M. Iowa.

Terminal Place.

Item 73. Lots one (1) and two (2) of Terminal Place.
Young's Addition.

Item 74. Lot five (5) in Block two (2) of Young's Addition to the town of Fort Des Moines.

Y. M. C. A. Official Plat, as Corrected.

Item 75. Lots three (3), five (5) and eight (8) of the Corrected Y. M. C. A. Official Plat, which was made and filed January 25, 1894, and recorded in Plat Book "E," Page 70, of the Polk County Recorder's Office.

Official Plats.

Item 76. The West fifty (50) feet of Lot eleven (11) of the Official Plat of the South West Quarter ($\frac{1}{4}$) of Section four

(4), Township seventy-eight (78), Range twenty-four (24), West of the 5th P. M. Iowa.

Item 77. Lot eleven (11), of the Official Plat of a tract of ground comprising Lots five (5) and six (6) in Block twenty (20) of H. M. Hoxie's Addition, and of Lots five (5) and six (6) in Block three (3) West Fort Des Moines, and a small piece of ground in the North East corner of Keene & Poindexter's Addition, not numbered.

Item 78. Lot four (4) of the Official Plat of the South West Quarter ($\frac{1}{4}$) of Section four (4), Township seventy-eight (78), Range twenty-four (24), West of the 5th P. M. Iowa, subject to a lease to Ewing & Jewett.

Official Plat in East $\frac{3}{4}$ of Sec. 9, Twp. 78, R. 24.

Item 79. Lots seven (7), eleven (11), seventeen (17), thirty-four (34), fifty-three (53), and all of Lot fifty-four (54) except the East one hundred and twenty-eight (128) feet of the West one hundred and thirty-eight (138) feet of the North three hundred (300) feet thereof, sold to the Schmitt & Henry Manufacturing Company on August 19, 1901, and except the West ten (10) feet thereof, heretofore deeded to the City of Des Moines for street purposes; also Lot fifty-seven (57) and a strip of ground six (6) feet in width, off the West side of the tract of ground between Elm Street and Tuttle Street, conveyed by F. M. Hubbell and wife to the City of Des Moines, by deed dated June 18, 1896, for the purpose of opening Eighth Street, said deed being recorded in Book 331, at Page 410, of the Records of the Office of the Recorder of Polk County, Iowa; also Lots fifty-eight (58), fifty-nine (59), sixty (60), and sixty-one (61), subject to rights of way in favor of the Des Moines Union Railway Company, as described in a deed, dated April 1, 1899, recorded in Book 375, at Page 430, and in a deed, dated October 1, 1895, recorded in Book 438, at page 559 of the Records of the Office of the Recorder of Polk County, Iowa, and except any streets and alleys heretofore dedicated by said F. M. Hubbell and wife, all of said lots being situated in the Official Plat of the East three-fourths ($\frac{3}{4}$) of Section nine (9), Township seventy-eight (78), Range twenty-four (24), West of the 5th P. M. Iowa, North of Raccoon River, and South of the South line of Fort Des Moines and Hoxie's Addition including Lot four (4) in Block sixteen (16) of Hoxie's Addition.

Item 80. All of the rights, title and interests of the said F. M. Hubbell and wife in and to a strip of ground one hundred (100) feet in width, being fifty (50) feet in width on each side of the center line of the main tract of the Des Moines & Kansas City Railway (now the Keokuk & Western Railroad), as now located and constructed over Lots one (1) and two (2)

of the Official Plat of the South West Quarter ($\frac{1}{4}$) and Lots seven (7) and eight (8) of the Official Plat of the North West Quarter ($\frac{1}{4}$) of Section nine (9), Township seventy-eight (78), Range twenty-four (24), West of the 5th P. M. Iowa.

Town of Demoin.

Item 81. The East Half ($\frac{1}{2}$) of Lot three (3) and all of Lot four (4) in Block fifteen (15) in the town of Demoin.

Item 82. Lot seven (7) in Block fifteen (15), in the town of Demoin.

Item 83. Lot sixteen (16) in Block sixteen (16) in the town of Demoin.

Item 84. Lots nine (9) and ten (10) in Block fifty-five (55) in the town of Demoin.

East Fort Des Moines.

Item 85. Lot four (4) in Block three (3) of East Fort Des Moines.

Item 86. The East two-thirds ($\frac{2}{3}$) of Lot twelve (12) in Block four (4) of East Fort Des Moines.

Item 87. Lot (8) and the West three (3) feet of Lot nine (9) in Block seven (7) of East Fort Des Moines.

Item 88. Lots two (2) and three (3) in Block nine (9) of East Fort Des Moines.

Item 89. The East two-thirds ($\frac{2}{3}$) of Lot nine (9) and the West two-thirds ($\frac{2}{3}$) of Lot ten (10) in Block (9) of East Fort Des Moines.

Item 90. The West one-third ($\frac{1}{3}$) of Lot two (2) in Block nineteen (19) of East Fort Des Moines.

Item 91. The East twenty (20) feet of Lot nine (9) in Block twenty (20) of East Fort Des Moines.

Item 92. Lot five (5) in Block ten (10) of East Fort Des Moines.

Griffith's Addition, and Thereabouts.

Item 93. Lot four (4) and the West one hundred and ten (110) feet of Lots five (5) and six (6) in Block "B" of Griffith's Addition to East Fort Des Moines.

Item 94. Lots nine (9) and ten (10) in Block "C" of Griffith's Addition to East Fort Des Moines.

Item 95. The East forty (40) feet of the North one hundred and ten (110) feet of Lots one (1) and two (2) in Block "E" of Griffith's Addition to East Fort Des Moines.

Item 96. Lot one (1) of the Official Plat of Lot three (3) in Block "J" of Griffith's Addition No. two (2) and of Lot one (1) in Block nineteen (19) East Fort Des Moines. Also the West eight and one-half ($8\frac{1}{2}$) feet of Lot two (2) in Block "J" of Griffith's Addition No. two (2) to the town of East Fort Des Moines.

Heimer's Official Plat.

Item 97. Lots one (1), two (2), three (3) and four (4) of the Official Plat of the following described property, viz., Official Plat of Lots one (1) and two (2) in Block two (2) of Scott's Addition to East Fort Des Moines; Block two (2) of Harrison Lyons' Addition, and Lots one (1) and two (2) in Block "I" of Griffith's Addition No. two (2) to the town of East Fort Des Moines.

H. Lyons' Addition.

Item 98. The West forty-eight (48) feet of Lot one (1) in Block three (3) of H. Lyons' Addition to the town of Demoine.

Item 99. Lots one (1) and two (2) in Block four (4) of H. Lyons' Addition to the town of Demoine.

Scott & Dean's Addition, and Thereabouts.

Item 100. The East Half ($\frac{1}{2}$) of Lots ten (10) and eleven (11) in Block "E" of Scott & Dean's Addition to Fort Des Moines.

Item 101. Lots nine (9) and ten (10) in Block "H" of Scott and Dean's Addition to Fort Des Moines.

Item 102. Lots four (4), five (5) and six (6) in Block "F" of Scott & Dean's Addition to Fort Des Moines.

Item 103. Lot seven (7) in Block two (2) of Scott & Dean's Addition to Fort Des Moines.

Item 104. The East one hundred and sixty (160) feet of the South Half ($\frac{1}{2}$) of Block four (4) of Scott's Addition to the town of Demoine.

Stewart's Addition.

Item 105. Lot one (1) in Block forty-six (46) of Stewart's Addition to the City of Des Moines.

Item 106. Lot thirteen (13) in Block sixty-five (65) of Stewart's Addition to the City of Des Moines.

Item 107. Lot one (1) in Block sixty-six (66), of Stewart's Addition to the City of Des Moines.

Lands.

Item 108. The North West Quarter ($\frac{1}{4}$) of the North East Quarter ($\frac{1}{4}$) of Section thirty-one (31), Township seventy-nine (79), Range twenty-three (23), West of the 5th P. M. Iowa, less two (2) acres in the North East corner thereof, described as follows: commencing at a point twenty-five (25) feet West of a point twenty-five (25) feet South of the North East corner of said North West Quarter ($\frac{1}{4}$) of the North East Quarter ($\frac{1}{4}$) of said Section thirty-one (31); running thence South six hundred and sixty-seven and two-tenths (667.2) feet; thence West one hundred and thirty and fifty-five hundredths (130.55) feet; thence North six hundred and sixty-seven and two-tenths (667.2) feet; thence East one hundred and thirty and fifty-five hundredths (130.55) feet to place of beginning. Also Lot six (6) of the Official Plat of the following described lands, viz., the South West Quarter ($\frac{1}{4}$) of the South West Quarter ($\frac{1}{4}$), the North Half ($\frac{1}{2}$) of the South West Quarter ($\frac{1}{4}$), the West Half ($\frac{1}{2}$) of the South East Quarter ($\frac{1}{4}$), the North East Quarter ($\frac{1}{4}$) of the North East Quarter ($\frac{1}{4}$) and the South Half ($\frac{1}{2}$) of the North East Quarter ($\frac{1}{4}$), all in Section thirty-one (31), Township seventy-nine (79), Range twenty-three (23), West of the 5th P. M. Iowa.

"Schedule B. Real Property, which may be Sold."

Each and all of the following described lots, parcels of land, additions, subdivisions, towns, sections and estates, parks, places, plats and re-plats, excepting the last item, are situated within the corporate limits of the City of Des Moines, in Polk County, Iowa, the lot or parcel of land described at the last item hereof being situated in Saylor Township, Polk County, Iowa, to-wit:

The Polk and Hubbell Park.

Item 1. Lots eight (8), nine (9) and ten (10) of The Polk & Hubbell Park.

Item 2. Lot twelve (12) and the East seventy (70) feet of Lot thirteen (13) of The Polk & Hubbell Park.

Item 3. Lots twenty-seven (27), twenty-eight (28) and twenty-nine (29) of The Polk & Hubbell Park, excepting the following described portion of said Lot twenty-nine (29), viz., commencing on the South line of said Lot twenty-nine (29), forty-two (42) feet West of the South East corner thereof; running thence East, on the South line, to the South East corner of said Lot; thence North to the North East corner of said Lot;

thence West, along the North line of said Lot, seventy-five (75) feet; thence South, in a straight line, two hundred (200) feet, more or less, to the place of beginning.

Item 4. Lot forty-four (44) of The Polk & Hubbell Park.

Item 5. Lots fifty-two (52) and fifty-three (53) of The Polk & Hubbell Park.

Item 6. Lots fifty-seven (57) and fifty-eight (58) and fifty-nine (59) of The Polk & Hubbell Park.

Item 7. All of Lot sixty-one (61) of The Polk & Hubbell Park, excepting the following, viz., commencing at the North West corner of said Lot sixty-one (61); running thence South, on the West line of said Lot one hundred and twenty-seven (127) feet; thence East, at right angles with the West line of said Lot, to a point thirty (30) feet distant from Forest Drive; thence Southeasterly, parallel with the North East side of said Lot, to Forest Drive; thence Northeasterly, along the line of said Lot, to the North line thereof; thence, on the North line of said Lot, to Twenty-eighth Street, being the place of beginning.

South Fort Des Moines.

Item 8. Lot eight (8) in Block one (1) of South Fort Des Moines.

Official Plat Lots.

Item 9. Lot thirteen (13) of the Official Plat of the North East Quarter ($\frac{1}{4}$) of Section nine (9) and Lot one (1) of the Official Plat of the West Half ($\frac{1}{2}$) of Section ten (10), all in Township seventy-eight (78), Range twenty-four (24), West of the 5th P. M. Iowa.

Item 10. Lot one (1) of the Official Plat of all that part of Official Plat Lot two (2) lying West of the Chicago, Great Western Railway in the Official Plat of the West Half ($\frac{1}{2}$) of Section ten (10), Township seventy-eight (78), Range twenty-four (24), West of the 5th P. M. Iowa, except the following: commencing at the North East corner of Lot two (2) of said Official Plat, running thence Northeasterly thirty (30) feet, on the extension of the Easterly line of said Lot two (2), heretofore sold to J. C. & E. C. Woodward; thence Northwesterly parallel to the North line of said Lot two (2), one hundred (100) feet; thence Southwesterly thirty (30) feet, to the North West corner of said Lot two (2); thence Southeasterly one hundred (100) feet, on the North line of said Lot two (2), to the place of beginning.

Item 11. Lot four (4) of the Official Plat of the South East Quarter ($\frac{1}{4}$) of Section nine (9), Township seventy-eight (78), Range twenty-four (24), West of the 5th P. M. Iowa.

Item 12. All that part of Lot thirteen (13) of the Official Plat of the South West Quarter ($\frac{1}{4}$) of Section five (5), Township seventy-eight (78), Range twenty-four (24), West of the 5th P. M. Iowa, lying North of the North line of Ingersoll Avenue in the City of Des Moines, except the West three hundred and five and one-half ($305\frac{1}{2}$) feet thereof.

Item 13. All that part of Lot sixteen (16) of the Official Plat of the South West Quarter ($\frac{1}{4}$) of Section five (5), Township seventy-eight (78), Range twenty-four (24), West of the 5th P. M. Iowa, lying North of the North line of Ingersoll Avenue, in the City of Des Moines, except the West ninety (90) feet thereof.

Rollin's Addition.

Item 14. Lot eight (8) in Block one (1) of Rollin's Addition to the City of Des Moines.

J. C. Savery's Addition.

Item 15. The West thirty-three (33) feet of the East fifty-five (55) feet of Lot one (1) in Block "B" of J. C. Savery's Addition to the City of Des Moines.

Allen & Polk & Hubbell's Replatting.

Item 16. Lot four (4) in Block four (4) of B. F. Allen and J. S. Polk and F. M. Hubbell's replatting and subdivision of W. A. Scott's Addition or subdivision to the City of Des Moines.

Item 17. Lots thirteen (13) and fourteen (14) in Block five (5) of B. F. Allen and J. S. Polk and F. M. Hubbell's Replatting and Subdivision of W. A. Scott's Addition or Subdivision to the City of Des Moines.

Brooks & Co.'s Addition.

Item 18. Lot three (3) of the Official Plat of Block forty-five (45) in Brooks & Co.'s Addition to the City of Des Moines, except the North fifty (50) feet thereof.

Town of Des Moines.

Item 19. Lots three (3) and four (4) in Block twenty-six (26) in the town of Des Moines.

Griffith's Addition to East Fort Des Moines, and Thereabouts

Item 20. The West forty (40) feet of Lot seven (7) in Block "G" of Griffith's Addition to East Fort Des Moines.
E. B. Hunt's Subdivision.

Item 21. Lots one (1), two (2), three (3), four (4), five (5) and six (6) of E. B. Hunt's Subdivision of Lot thirty-seven (37) of Brooks & Co.'s Addition to the City of Des Moines.

Scott & Dean's Addition.

Item 22. Lots four (4) and five (5) in Block "8" of Scott & Dean's Addition to Fort Des Moines.

Stewart's Addition.

Item 23. Lot twenty-seven (27) in Block forty-eight (48) of Stewart's Addition to the City of Des Moines.

Item 24. Lot nine (9) in Block fifty-seven (57) of Stewart's Addition to the City of Des Moines.

Item 25. Lot nineteen (19) in Block sixty-eight (68) of Stewart's Addition to the City of Des Moines.

Hoffman's Addition.

Item 26. Lots twenty-three (23) and twenty-four (24) of Hoffman's Addition to Grant Park.

Item 27. Lots seventy-four (74), seventy-five (75), seventy-six (76) and seventy-seven (77) of Hoffman's Addition to Grant Park.

Lake-Side.

Item 28. Lots one hundred and twenty-eight (128) and one hundred and twenty-nine (129) in Lake-Side.

Capital Park.

Item 29. Lots twelve (12), thirteen (13), fourteen (14), fifteen (15) and sixteen (16) in Capital Park.

Polk & Hubbell's Addition.

Item 30. Lot three hundred and thirty-five (335) of Polk & Hubbell's Addition to the Town of Capital Park.

Item 31. Lot three hundred and forty (340) of Polk & Hubbell's Addition to the Town of Capital Park.

Item 32. Lots three hundred and fifty-four (354) and three hundred and fifty-five (355) of Polk & Hubbell's Addition to the Town of Capital Park.

Item 33. Lots three hundred and sixty (360), three hundred and sixty-one (361) and three hundred and sixty-two (362) of Polk & Hubbell's Addition to the Town of Capital Park.

Item 34. Lots three hundred and sixty-five (365) and three hundred and sixty-six (366) of Polk & Hubbell's Addition to the Town of Capital Park.

Item 35. Lots four hundred and thirty-nine (439) and four hundred and forty (440) of Polk & Hubbell's Addition to the Town of Capital Park.

Item 36. Lots four hundred and forty-four (444) and four hundred and forty-five (445) of Polk & Hubbell's Addition to the Town of Capital Park.

Item 37. Lots four hundred and forty-nine (449) and four hundred and fifty (450) of Polk & Hubbell's Addition to the Town of Capital Park.

Item 38. Lot four hundred and fifty-five (455) of Polk & Hubbell's Addition to the Town of Capital Park.

Item 39. Lot four hundred and sixty (460) of Polk & Hubbell's Addition to the Town of Capital Park.

Item 40. The East one hundred and eight-seven (187) feet of the West three hundred and seventy-six (376) feet of Lot "A" of Polk & Hubbell's Addition to the Town of Capital Park.
Ashbrook Place, and Official Plat of a Part Thereof.

Item 41. Lots A, B and C, except the North one hundred and fifty (150) feet of said Lot C, all in Block one (1) of the Official Plat of certain lots in Ashbrook Place.

Item 42. Lots A and B in Block two (2) of the Official Plat of certain lots in Ashbrook Place.

Item 43. Lot A in Block three (3) of the Official Plat of certain lots in Ashbrook Place.

Item 44. Lots C, D, E and F in Block three (3) of the Official Plat of certain lots in Ashbrook Place.

Item 45. Lots A, B, C, D, E and F in Block four (4) of the Official Plat of certain lots in Ashbrook Place.

Item 46. Lots A, B, C, D, E, F, G and H in Block five (5) of the Official Plat of certain lots in Ashbrook Place.

Item 47. Lots A, B, C, D, E, F, G, H, I, J, K, L, M and N in Block six (6) of the Official Plat of certain lots in Ashbrook Place.

Item 48. Lots A, B, C and D in Block seven (7) of the Official Plat of certain lots in Ashbrook Place.

Item 49. Lot G in Block seven (7) of the Official Plat of certain lots in Ashbrook Place.

Item 50. Lots A, B, C and D in Block eight (8) of the Official Plat of certain lots in Ashbrook Place.

Item 51. Lots F, G and H in Block eight (8) of the Official Plat of certain lots in Ashbrook Place.

Item 52. Lot A in Block nine (9) of the Official Plat of certain lots in Ashbrook Place.

Item 53. Lots A, B, C, D, E and F in Block ten (10) of the Official Plat of certain lots in Ashbrook Place.

Item 54. Lots A, B, C, D, E, F, G, H and J in Block eleven (11) of the Official Plat of certain lots in Ashbrook Place.

Item 55. Lots A, B, C, D, E, and F in Block twelve (12) of the Official Plat of certain lots in Ashbrook Place.

Item 56. Lots A, B, C, D, E, F, G, H, J, K, L, M, N, O and P in Block thirteen (13) of the Official Plat of certain lots in Ashbrook Place.

Item 57. Lots A, B, C, D, E, F, G, H, J, K, L, M and N in Block fourteen (14) of the Official Plat of certain lots in Ashbrook Place.

Pierce's Subdivision and Thereabouts.

Item 58. Lots twenty-two (22), twenty-three (23) and the West Half ($\frac{1}{2}$) of Lot twenty-four (24) of the Official Plat of

all of Section seven (7), Township seventy-eight (78), Range twenty-four (24), West of the 5th P. M. Iowa, excepting the West Half ($\frac{1}{2}$) of the North West Quarter ($\frac{1}{4}$), the West Half ($\frac{1}{2}$) of the East Half ($\frac{1}{2}$) of the North West Quarter ($\frac{1}{4}$), the South West Quarter ($\frac{1}{4}$) of the South East Quarter ($\frac{1}{4}$), and Lots one (1), three (3), four (4) and five (5) of Pierce's Subdivision of the North Half ($\frac{1}{2}$) of the North East Quarter ($\frac{1}{4}$) of said Section, Township and Range.

Lands.

Item 59. Government Lot three (3) in Section twenty-one (21), Township seventy-nine (79), Range twenty-four (24), West of the 5th P. M. Iowa, formerly known as Lots one (1) to twenty-seven (27), inclusive, of Christy's Subdivision of the North Fractional Half ($\frac{1}{2}$) of said Section, Township and Range.

"Schedule C. Personal Property."

Contracts of purchase and sale of real estate.

Item 1.	The J. B. Green Contract.....	\$1,205.91
Item 2.	The Rosa B. Gillespie Contract.....	1,160.00
Item 3.	The Jerry Herrington Contract.....	754.82
Item 4.	The John C. Hutton Contract.....	763.36
Item 5.	The H. M. Hutton Contract.....	1,302.31
Item 6.	The D. S. Hutton Contract.....	1,146.88
Item 7.	The C. M. Hardy Contract.....	2,183.86
Item 8.	The O. M. Kimmen Contract.....	385.24
Item 9.	The I. W. Meaner Contract.....	535.98
Item 10.	The Thomas J. Welch Contract.....	1,078.02
Item 11.	The W. F. Wilcox Contract.....	2,215.50

Note: The transfers made in the foregoing Trust Conveyance and Convention were entered for taxation on the 21st day of January, A. D. 1904, by Fred A. Cope, Auditor of Polk County, Iowa.

Said instrument was filed for record in the office of Mrs. Frank W. Dodson, Recorder of Polk County, Iowa, on the 22nd day of January, A. D. 1904, at 3:20 o'clock P. M., was forthwith indexed in both Lot and Chattel Indexes, and was duly recorded in Book 473, at pages 58 et seq. of the records of said office.

EXHIBIT 78.

This Indenture, made this 16th day of October, in the year 1886, between The Mercantile Trust Company of New York, as

trustee of The Collateral Trust Mortgage of The Wabash, St. Louis and Pacific Railway Company, party of the first part, and James F. Joy, Ossian D. Ashley, Thomas H. Hubbard and Edgar T. Welles, trustees, parties of the said part, Witnesseth:

Whereas, under and in pursuance of the several decrees and supplemental decrees of the Circuit Courts of the United States, hereinafter named, rendered in a certain cause in Chancery therein then pending, entitled "The Central Trust Company of New York and James Cheney, complainants, against The Wabash, St. Louis and Pacific Railway Company and others, defendants, Consolidated Cause," foreclosing the equity of redemption of said defendant railway company in its railway, and its appurtenances, franchises and property under a certain mortgage or deed of trust, executed by said railway company and described in said decrees as "The General Mortgage" of said railway company, and also foreclosing the equity of redemption of said railway company in certain property, described in an instrument in writing, executed by said railway company and described in said decrees as "The Collateral Trust," to-wit, the decree and supplemental decree rendered in said cause in the Circuit Court of the United States for the Eastern District of Missouri, on the sixth day of January and fifth day of March, 1886; for the Southern District of Illinois, on the eighth day of January and the sixth day of March 1886; for the District of Indiana, on the ninth day of January and the sixth day of March, 1886; for the Southern District of Iowa, Eastern Division, on the twelfth day of January and twentieth day of March, 1886; for the Northern District of Ohio, Western Division, on the twelfth day of January and seventeenth day of March, 1886; and for the Eastern District of Michigan, on the twelfth day of January and eighth day of March, 1886, Edmund T. Allen, Commissioner, did, on the twenty-sixth day of April, A. D. 1886, in the City of St. Louis, in the State of Missouri, offer for sale, and did, among other things, sell, the property hereinafter described to James F. Joy, Ossian D. Ashley, Thomas H. Hubbard and Edgar T. Welles, constituting a purchasing committee under an agreement bearing date July 15th, 1885, made between the holders of all the collateral trust bonds and a majority of the general mortgage bonds; and

Whereas, said sale was duly confirmed by the said several Circuit Courts of the United States on and subsequently to the fifteenth day of June, 1886; and

Whereas, said Edmund T. Allen, Commissioner, was ordered and directed by the said several Circuit Courts of the United States on and subsequently to the twenty-first day of September, 1886, to execute and deliver to the said Purchasing Committee deeds to the property purchased; and

Whereas, it was at the same time ordered, among other things, that The Mercantile Trust Company of New York, as trustee of the aforesaid collateral trust mortgage, should in due form convey to said purchasers all its interest as trustee and as mortgagee in and to the property sold by said Commissioner to said purchasers;

Now, Therefore, in consideration of the premises, The Mercantile Trust Company of New York, as trustee as aforesaid, has granted, bargained, sold and conveyed, and by these presents does grant, bargain, sell and convey, unto James F. Joy, Ossian D. Ashley, Thomas H. Hubbard and Edgar T. Welles, the survivors or survivor of them, and their or his successors or assigns, as trustees under the aforesaid agreement of July 15th, 1885, and in trust for the parties interested thereunder, all its right, title and interest as trustee and as mortgagee in and to the following named property, to-wit: Lots one (1), two (2), three (3), four (4), five (5) and six (6) in Springer and Fox addition to the City of Chicago, Illinois; also that part of lot thirty-two (32) of the Assessor's division of the northwest quarter and west half of the northeast quarter of section thirty-two (32), township thirty-nine (39) north, range fourteen (14) east, of the third principal meridian, lying east of the centre of the south branch of the Chicago River, in Cook County, in the State of Illinois, the title to which real estate is in Solon Humphreys, in trust for the said Wabash Railway Company; also fifteen (15) locomotives manufactured by the Rhode Island Locomotive Works; thirteen (13) passenger cars, manufactured by Barney, Smith & Co.; five (5) baggage cars, manufactured by Barney, Smith & Co.; twelve hundred and ten (1,210) freight cars, manufactured by Barney,

Smith & Co.; also all of the right, title and interest of the said The Mercantile Trust Company in and to certain rolling stock, mentioned and described in certain agreements between the Wabash, St. Louis and Pacific Railway Company and the New York and Pacific Car Trust Association; also the steamers "Russell Sage," "John C. Gault" and "A. L. Hopkins;" also all the right, title and interest of the said The Wabash, St. Louis Pacific Railway Company in and to \$46,000 Union Bridge Company bonds; \$1,342,000 Humeston and Shenandoah Railroad Company first mortgage 7 per cent. bonds; \$1,000,000 Wabash, St. Louis and Pacific Railway Company general mortgage 6 per cent. bonds; \$400,000 Wabash Railway Company mortgage 7 per cent. bonds of 1879; \$199,000 Wabash, St. Louis and Pacific Railway Company—Detroit Division—6 per cent. bonds; \$248,000 Quincy, Missouri and Pacific Railroad Company income bonds; \$1,711,000 Toledo, Peoria and Western Railroad Company first preferred income bonds; \$728,000 Toledo, Peoria and Western Railroad Company second preferred income bonds; 13,404 shares Toledo, Peoria and Western Railroad Company; 10 shares St. Joseph Union Depot; 210 shares Union Depot Company of Kansas City, Missouri; 10 shares Hannibal Union Depot Company; 5,037 shares Des Moines Northwestern Railway Company; 2,214 shares Havana, Rantoul and Eastern Railroad Company; 9,996 shares Des Moines and St. Louis Railroad Company; 20,127 shares Humeston and Shenandoah Railroad Company; 21,534 96/100 shares Missouri, Iowa and Nebraska Railway Company; 9,000 shares St. Louis, Jerseyville and Springfield Railroad Company; 2,030 shares Clarinda and St. Louis Railroad Company; 14,246 shares Quincy, Missouri and Pacific Railroad Company; 5,380 shares St. Louis, Ottumwa and Cedar Rapids Railway Company; 11,089 shares Council Bluffs and St. Louis Railway Company; 7,281 shares St. Louis, Council Bluffs and Omaha Railroad Company; 4,332 shares Brunswick and Chillicothe Railroad Company; 2,687 shares Centreville, Moravia and Albia Railroad Company; 750 shares Attica, Covington and Southern Railway Company; 1,665 shares American Refrigerator Transit Company of Illinois; 60 shares Union Bridge Company of Toledo, Ohio; 17 shares St. Louis County Railroad Company; 4,994 shares Peoria and Pekin Union Railway Company; 9,999 shares Chicago and Western Indiana Railroad Company; 12,500 shares St. Louis Bridge Company, common stock; and 1,160 shares St. Louis and Mississippi Valley Transportation Company.

To have and to hold the above-granted premises, with all the appurtenances and every part thereof, and the said rolling stock, steamers and appurtenances thereto belonging, railway bonds and railway and other stocks, unto the said James F. Joy, Ossian D. Ashley, Thomas H. Hubbard and Edgar T. Welles, as trustees as aforesaid, their survivors or survivor, and their or his successors or assigns; subject, however, to all the terms and conditions of said orders of said several Courts confirming said sale, as aforesaid, and to all the terms, provisions, conditions, qualifications and restrictions of said decrees, in pursuance of which this deed is made as aforesaid.

In Witness Whereof, the said The Mercantile Trust Company of New York has caused its corporate seal to be here unto affixed and attested by its Secretary and these presents to be signed by its President, this eighteenth day of April 1888.

(Seal) THE MERCANTILE TRUST COMPANY OF
NEW YORK,
By Louis Fitzgerald, President.

Attest:
H. C. Deming, Secretary.

State of New York,
City and County of New York—ss.

On this eighteenth day of April, 1888, before me personally came Louis Fitzgerald to me known, and known to me to be the President of The Mercantile Trust Company of New York, described in and which executed the foregoing instrument, who, being by me duly sworn, did depose and say that he resides in the City of New York; that he is the President of the said The Mercantile Trust Company of New York; that he knows the corporate seal of said company; that the seal affixed to the foregoing instrument is such corporate seal of said company and was so affixed by authority of the Board of Directors of said company, and that he signed his name there to by the like authority as president of said company.

Witness my hand and notarial seal the day and year above written.

(Seal)

LEO V. TURNER,
Notary Public.

Table

No. Ctf.	Date.	No. of Shares.	To Whom
1.	Apr. 8, 1890.....	1	G. M. Dodge
2.	Do.	1	F. M. Hubbell
3.	Do.	1	F. C. Hubbell
4.	Do.	1	H. D. Thompson
5.	Do.	1	L. M. Martin
6.	Do.	1	J. F. How
7.	Do.	1	C. M. Hays
8.	Do.	1	A. B. Cummins
9.	Do.	996	(Purchasing Com (Wabash, St. Lo (Railway Compa
10.	Do.	998	Des Moines & N Company
11.	Do.	998	Des Moines & N way Co.
12.	Do.	500	F. M. Hubbell
14.	Do.	500	G. M. Dodge
15.	Aug. 28, 1890.....	498	(Purchasing Com (St. L. Pacific R.
16.	Do.	250	F. M. Hubbell
17.	Do.	248	Do.
18.	Dec. 31, 1890.....	1	A. M. Denman
19.	Jan. 15, 1892.....	500	D. M. Nor. & W (
20.	Do.	998	(D. M. Nor. & W
21.	Do.	998	(Do.
22.	Do.	998	(Do.
23.	Jan. 2, 1893	1	G. M. Dodge
24.	Do.	499	D. M. Nor. & W
25.	Oct. 4, 1893	494	Do.
26.	Do.	2500	F. M. Hubbell &
27.	Feb. 1, 1895	1	H. L. Magee
28.	Dec. 9, 1895	1	Jos. Ramsey, Jr
29.	Do.	1	C. Huttenlocher
30.	Do.	998	D. M. N. & W
31.	Dec. 9, 1895	2495	F. M. Hubbell &
32.	Feb. 7, 1896	1	F. M. Hubbell
33.	Dec. 30, 1897.....	1	Cyrus Kirk
34.	Jan 5 1899	1	C. A. Goodnow

Exhibit 79.

Tabulation of Stock Certificates issued by Des Moines Union Railway Company.

Whom Issued.	Date Canc'd.	To Whom Re-Issued.	No. New Ctf.	Remarks.	Shares Outstand.
.....	Dec. 31, 1890	A. N. Denman	18		
ell					1
ll					1
erson					1
.....	Feb. 7, 1896	F. M. Hubbell	32		
.....	Feb. 1, 1895	H. L. Magee	27		
.....	Dec. 9, 1895	Jos. Ramsey, Jr.	28		
.....	Oct. 3, 1899	A. J. Earling	38		
Committee of)		Purchasing Committee	15	498 shares)	
nis & Pacific)	Aug. 28, 1890	F. M. Hubbell	16	250 " (996	
ny)		Do.	17	248 ")	
Northern Railway					
.....	Jan. 15, 1892	D. M. Northern & Western Railway Co.	20	998 " 998	
Northwestern Rail-					
.....	Jan. 15, 1892	Des Moines Northern & West- ern Ry. Co.	22	998 " "	
.....	Jan. 15, 1892	Do.	21	998 " Composed of 12, 16, 17	
.....	Jan. 15, 1892	Do.	19	500 " "	
Committee of Wab.)		Continental Trust Co. of the			
Co.)	Mar. 23, 1899	City of New York.	35	498 " "	
.....	Jan. 15, 1892	Des Moines Nor. & Western Ry. Co.	21	998 " Composed of 12, 16, 17	
.....	Do.	Do.	21	998 " Composed of 12, 16, 17	
.....	Dec. 30, 1897	Cyrus Kirk	33	1 share	
st. Ry. Co.)	Jan. 2, 1893	G. M. Dodge	500 (23	1 share)	
)		D. M. Nor. & W. Ry. Co.	(24	499 shares) 500	
st. Ry. Co.)	Oct. 4, 1893	D. M. Nor. & West. Ry. Co..	25	494)	
.....)	Do.	F. M. Hubbell & Son	26	2500) 2994 Shares	
.....)	Do.				
.....	Dec. 9, 1895	C. Huttenlocher	29	1 share	
st Ry. Co.)		D. M. Nor. & West. Ry. Co..	30	998 shares (Composed of 24, 499	
)	Dec. 9, 1895			(25, 494	
Son		F. M. Hubbell & Son.	31	2495 shares (Part of 26, 5	
.....	Jan. 5, 1906	E. B. Pryor	45	1 share	
.....	Do.	F. A. Delano	44	1 share	
.....	Oct. 2, 1899	A. B. Cummins	36	1 share	
ern Ry. Co.)	Oct. 3, 1899	Chgo. Mil. & St. P. Ry. Co..	37	998 shares	
Son					2495
.....	Jan. 5, 1899	C. A. Goodnow	34	1 share	
.....	Jan. 4, 1906	G. C. Hubbell	41	1 "	
.....	Aug. 14, 1902	H. A.	30	1 "	



FURTHER STIPULATION.*

It is also stipulated and agreed that of the three companies, the Des Moines Northwestern Railway Company, the St. Louis, Des Moines & Northern Railway Company, and the Des Moines & St. Louis Railroad Company, the Des Moines Northwestern Railway Company first used the terminal property in Des Moines for general railroad purposes (as distinguished from construction purposes) and that the St. Louis, Des Moines & Northern Railway Company was the next of said companies to use said property for said general purposes, and that the Des Moines & St. Louis Railroad Company was the last of said companies to use said property for said general purposes; and that in connection with its use of said property each of said companies operated its passenger trains to the passenger depot between west Fifth and Sixth streets in the city of Des Moines.

No passenger station building at which passenger trains have regularly stopped has been maintained between said passenger station and Clive, but for some years a flag station was maintained about four miles west of the said passenger station in Des Moines and during 1892 and 1893 a building was maintained at the race track, at west Twenty-eighth street to accommodate traffic between the race track and Des Moines. This consisted of a floor and platform with roof covering it, but was not otherwise enclosed.

It is further stipulated and agreed that on or about May 1, 1899, the total amount of the outstanding capital stock of the Des Moines, Northern & Western Railroad Company was forty-three thousand seven hundred and twenty-five shares, and that of the said shares the Chicago, Milwaukee & St. Paul Railway Company was then the owner of forty three thousand seven hundred and twenty-four shares, and that it did thereafter and on or before the 8 day of May, 1899, acquire the remaining outstanding capital stock of the said Des Moines, Northern & Western Railroad Company; that on or about the said 1st day of May, 1899, the said Chicago, Milwaukee & St. Paul Railway Company was the owner of all of the outstanding bonds of the said Des Moines, Northern & Western Railroad Company. That all of the said bonds were cancelled and the trust deed was released on or about the 17th day of May, 1899, but that the said Chicago, Milwaukee & St. Paul Railway Company continued to be the owner and holder of all of the capital stock of the said Des Moines, Northern & Western Railroad until after June 19, 1907.

*NOTE:—This stipulation, with its accompanying Exhibits, is a part of stipulation signed by Counsel, ante page 159.

It is further stipulated and agreed that the report of the St. Louis, Des Moines & Northern Railway Company for the year ending June 30, 1882, shows among other things the following:

Debt.

Funded debt as follows:

First mortgage bonds due August 1, 1921, rate of interest 6 per cent \$303,000.00
Interest paid on same during the year. None
Bonds are \$4,000 per mile from west city limits to Clive station, and \$8,000. per mile from Clive station north.

Total amount of funded debt..... \$303,000.00
Total amount of floating debt. None

Total amount of debt liabilities..... \$303,000.00

Amount of debt per mile of road.. \$ 8,000.00
Total amount of stock and debt.. 1,025,750.00

Amount of stock and debt per mile of road. When the road is completed, the amount will be \$28,000 per mile.

Cost of Road and Equipment.

Total expended for construction \$1,025,750.00

Average cost of construction per mile of road
(42,365 miles) \$ 28,000.00

The equipment is included in the cost of road.

General Exhibit.

Total earnings \$2,932.00
Total expenses, including taxes 1,998.07

Net earnings \$ 934.93

Interest accruing during the year..... \$9,090.00
Interest on funded debt 9,090.00

Analysis of Earnings.

Earnings, passenger:

From local passengers	\$1,205.18	
From all passengers		\$1,205.18
Total earnings passenger department.....		\$1,205.18

Earnings, freight:

From local	\$1,727.19	
Total earnings, freight department.....		\$1,727.19
Total transportation earnings	2,932.37	
Proportion of earnings for Iowa.....		2,932.37
Total income from all sources.....		\$2,932.37

Expenses of Operating the Road for the Year.

Class 1—Maintenance of way and buildings (charged to operating expenses).

Repairs of road-bed and track.....	\$1,177.75	
Total		\$1,177.75

Class 2—Maintenance of motive power and cars.

Repairs of locomotives	\$	5.00
Total	\$	5.00

Class 3—Conducting Transportation.

Passenger train service	\$	1.25
Damage and loss of freight and baggage.....		1.04
Agents and station service.....		426.03
Station supplies		77.40
Total	\$	505.72

Class 4—General Expenses.

Salaries of general officers and clerks.....	\$	224.00
Stationery and printing		85.00
Total	\$	309.00

Recapitulation of Expenses.

Maintenance of way and buildings.....	\$1,177.75
Maintenance of motive power and cars.....	5.00
Conducting transportation	505.72
General expenses, including taxes.....	309.60
Total operating expenses and taxes.....	<u>\$1,998.07</u>

General Recapitulation.

Total income	\$2,932.37
Total operating expenses and taxes.....	1,998.07
Net income above operating expenses, taxes, interest and rental	<u>934.30</u>

General Balance Sheet at the Closing of Accounts.
June 30, 1882.

Debit.

F. M. Hubbell, treasurer	\$ 909.10
Des Moines station	27.00
Clive station .....	.00
General office	224.00
Agents and clerks	418.32
United States Mail expense	7.30
Stationery	85.00
Engine repairs	5.00
Track repairs	1,177.75
Train and station supplies	77.00
Conductors, baggagemen and brakemen.....	1.25
Lost and damages freight .....	.00
Drawbacks and overcharged freight .....	.30
Total	<u>\$2,932.37</u>

Credit.

Gross earnings	<u>\$2,932.37</u>
Total	<u>\$2,932.37</u>

Description of Road.

Length main line of road from Des Moines to Boone, miles	42.365
Total length of road belonging to this company, miles	42.365
Aggregate length of sidings and other tracks not above enumerated, feet	6,038
Same in Iowa, feet	6,038
Aggregate length of track computed as single track exclusive of sidings, miles.....	42.365
Same in Iowa	42.365
Total length of iron rails & tracks in Iowa, exclusive of sidings	42.365
Gauge of track	3 feet.
If any part of the road was first opened for operation during the past year, state the date	May 1, 1883.
Total miles of road operated by this company..	42.365
Total miles of road operated by this company in Iowa	42.365

Speed of Trains in Iowa.

Rate of speed of passenger trains, including stops, miles	15
Rate of speed of freight trains, including stops, miles	10

Telegraph.

How many miles of telegraph are owned by your company	42.365
What other company, if any, owns a line of telegraph on your right of way, and how many miles does each own? D. M. N. W. Ry. from Des Moines to Clive, 7.18 miles.	

That the said railroad had only been partially built when the said report was made and that the part of it that was then in operation had been operated but a short time.

It is further stipulated and agreed that in the building of the railroad aforesaid operated by the St. Louis, Des Moines & Northern Railway Company, the right of way over the pieces of land hereinafter described was acquired by condemnation against the respective persons who are named as the owners thereof, to-wit:

Description	Sec.	Twp.	Owner.
N. W. $\frac{1}{4}$	21	70	Babcock
N. E. $\frac{1}{4}$	5	79	Saunders
N. W. $\frac{1}{4}$	17	79	Murphy
S. E. $\frac{1}{4}$	7	78	Knotts
Lot M. Sub. Div. Estate			Wheeler
S. W. $\frac{1}{4}$	2	78	School District
S. W. $\frac{1}{4}$	30	80	Cummins
S. E. $\frac{1}{4}$	21	79	Guard
N. W. $\frac{1}{4}$	30	79	Brection
N. W. $\frac{1}{4}$	2	78	Goodhue
S. W. $\frac{1}{4}$	21	79	Ganzer
S. E. $\frac{1}{4}$	21	79	Babcock
S. E. $\frac{1}{4}$	7	78	Welker

Description	Sec.	Twp.	Owner
N. E. $\frac{1}{4}$	24	70	Young
S. W. $\frac{1}{4}$	5	79	Bushnell
N. E. $\frac{1}{4}$	31	80	Manchester
N. E. $\frac{1}{4}$	31	79	Morris
N. E. $\frac{1}{4}$	34	79	White
N. W. $\frac{1}{4}$	34	79	White
S. E. $\frac{1}{4}$	34	78	Wright heirs
N. E. $\frac{1}{4}$	34	79	Young
N. E. $\frac{1}{4}$	34	79	Young
Lot 8.....	Blk 28	Madrid	Stanfield
Lot 2.....	Blk 20	Madrid	Binbaker
Lot 1.....	Blk 20	Madrid	Delander

Description	Sec.	Twp.	Owner
Lot 7.....	Blk 28	Madrid	Stanfield
Lot 2.....	Blk 3	Madrid	School District
Lot 8.....	Blk 2	Madrid	Gaston
Lot 8.....	Blk 1	Madrid	Palmer
S. W. $\frac{1}{4}$	28	84	Phelan
S. E. $\frac{1}{4}$	24	82	Frey
S. E. $\frac{1}{4}$	12	82	Walt Webb
N. W. $\frac{1}{4}$	13	83	Gildea
N. E. $\frac{1}{4}$	24	83	Hoffman
S. E. $\frac{1}{4}$	26	83	Bennett

That each of the said condemnation proceedings was instituted in the name of the St. Louis, Des Moines & Northern Railway Company, but in each instance the money paid under the condemnation proceedings to the owner of the property for the right of way so acquired was paid by Gen. G. M. Dodge.

In the Circuit Court of the United States.

For the Southern District of Iowa, Central Division.

The Chicago, Milwaukee and St. Paul Railway Company, and
The Wabash Railroad Company, Plaintiffs,

vs.

The Des Moines Union Railway Company, Frederick M. Hubbell, Frederick C. Hubbell, F. M. Hubbell and Son, Defendants.

Stipulation of Counsel, respecting Annual Reports of Des Moines Union Railway Company, to Executive Council of State of Iowa, for the purpose of the assessment of its property for taxation by said council, for the years ending December 31st, 1888, December 31st, 1889, December 31st, 1890, January 1st, 1892, January 1st, 1893, and January 1st, 1894.

For the purpose of abbreviating the record as far as practicable, in the above entitled cause, it is agreed that the Annual Reports of the Des Moines Union Railway Company, for the above mentioned years, are all in substantially the same form; that each contains the name of the Company; the name of its officers; its place of business, and a description of its real and personal property.

Said real property so described includes by specific description each of the lots and parcels of ground described in the following deeds:

Deed from James F. How to Des Moines Union Railway Company, dated November 19, 1887, identified in stipulation between the parties as plaintiff's exhibit #17.

Deed from James F. How to Des Moines Union Railway Company, dated December 10, 1887, identified in said stipulation between the parties as plaintiff's exhibit #18.

Deed from James F. How to Des Moines Union Railway Company, dated April 28th 1888, and identified in said stipulation between the parties as Plaintiff's "Exhibit #19."

Deed from G. M. Dodge to Des Moines Union Railway Company, dated Nov. 7, 1887, identified in said stipulation as plaintiff's exhibit #20.

Deed from St. Louis, Des Moines & Northern Railway Company to Des Moines Union Railway Company, dated November 7, 1887, identified in said stipulation as plaintiff's exhibit #21.

Deed from Des Moines & St. Louis Railroad Company to Des Moines Union Railway Company, dated February 21, 1888, identified in said stipulation as plaintiff's exhibit #22.

That the names of the officers of the Company for the year ending December 31st, 1888, are therein stated to be as follows:

President,	G. M. Dodge,	No. 1 Broadway, New York.
Vice President,	James F. How,	St. Louis, Mo.
Secretary,	F. M. Hubbell,	Des Moines, Iowa.
Treasurer,	F. M. Hubbell,	" " "
General Super- intendent,	J. B. Van Dyne,	" " "
Auditor,	D. Y. Van Dyne,	" " "

James F. How, above named as vice-president was during the year covered by the said report the general agent for the receivers of the Wabash, St. Louis and Pacific Railway Company, and the general agent for the purchasing committee of the holders of bonds issued by the said company and in process of foreclosure.

Schedule 5 of said report is headed:

"Gross earnings for the year ending, December 31, 188..of road operated within this state", and is followed by a form divided into columns headed respectively:

Name of line	a
From passengers	b
From freight	c
From express service	d
From mail service	e
From telegraph service	f
From track rent	g
From car rent	h
Miscellaneous	i

The only thing stated in this schedule 5 is the following which is written across the columns headed "c to h inclusive":

"General Remarks."

"The Des Moines Union Railway Company is simply a "Representative Company", acting as an agency at Des Moines for the Wabash Western Railway Company, the Des Moines and Northwestern Ry., Company, and the St. Louis Des Moines and Northern Railway Company; performing all the necessary work for them, and charging each road its due pro-

portion of the expenses, thereby incurred, etc. (at actual cost.).

That said report was signed and verified on March 19, 1889,

By James F. How,
Vice President of the Des Moines
Union Ry. and

On March 25th, 1889,
By J. B. VanDyne,
General Superintendent of the
Des Moines Union Ry.

On opposite page to Schedule 5 is page headed:

"Schedule 6, Operating Expenses (Taxes excluded), roads in this state for the year ending December 31, 188..."

This schedule is divided into columns, the columns having appropriate headings as to the various items making up operating expenses. The only entry under this schedule is the following:—

"See general remarks".

That the names of the officers of the company for the year ending December 31, 1889, are stated to be as follows:—

President,	G. M. Dodge,	No. 1 Broadway New York
Vice President,	James F. How,	St. Louis, Mo.
Secretary	F. M. Hubbell,	Des Moines, Iowa.
Treasurer,	Horace Seely,	" " "
Gen. Supt.	Horace Seely,	" " "
Auditor,	W. S. Godfrey,	" " "

The said James F. How continued to be general agent as aforesaid until August 1, 1889, when he became a vice-president of the Wabash Railroad Company, and its chief executive officer in the west.

The said report for the year ending December 31, 1889 contain schedule 5 in the form above set out, and the only return made under said schedule was the following:

"General Remarks".

"The Des Moines Union Railway Company is simply a 'Representative Company', acting as an agency at Des Moines for the Wabash Railroad Company, the Des Moines and Northwestern Ry. Co. and the Des Moines and Northern Railway Company, performing all necessary work for them and charging each road at actual cost, its due proportion of the expense thereby incurred."

And that said report was signed and verified on February 13, 1890.

By Horace Seely,
General Superintendent of the
Des Moines Union Ry. Co.

That the names of the officers of the company for the year ending December 31, 1890, are stated to be as follows:

President	G. M. Dodge	No. 1 Broadway, New
Vice President	A. B. Cummins,	Des Moines, Iowa.
Secretary	F. M. Hubbell,	"
Treasurer,	F. M. Hubbell	"
General Superintend-		
ent,	Horace Seely	"
Auditor,	Horace Seely (Acting)	"

This report contained a schedule 5 similar in form to schedule 5 in the said report of Dec. 31, 1888, and contained no report under schedule 5 except the following:

"General Remarks."

"The Des Moines Union Ry. Co. is simply a representative company, acting as an agency at Des Moines for the Wabash Railroad Company, the Des Moines & Northwestern Railway Company, and the Des Moines & Northern Ry. Co., performing all necessary work for them and charging each at actual cost, its due proportion for the expense thereby incurred."

And that said report was signed and verified on Feb. 14, 1891.

By A. B. Cummins, Vice Pres. of the Des
Moines Union Ry. Co. & Horace Seely, Gen-
eral Superintendent of the Des Moines Union
Ry. Co.

That the names of the officers of the company for the year ending January 1, 1892 are stated to be as follows:

President	F. C. Hubbell,
Vice-President,	A. B. Cummins,
Secretary,	F. M. Hubbell,
Treasurer,	H. D. Thompson, Des Moines, Ia.
General Solicitor,	A. B. Cummins,
General Superintendent	Horace Seely,
Auditor,	Charles Seely.

This report contained a schedule 5 similar in form to schedule 5 in the said report of Dec. 31, 1888, and contained no report under schedule 5 except the following:—

"General Remarks."

"The Des Moines Union Railway Company is simply a representative company, acting as an agency at Des Moines for the Wabash Railroad Company and the Des Moines, Northern and Western Railway Company, performing all necessary work for them, and charging each at actual cost, its due proportion for the expense thereby incurred."

And that said report was signed and verified on February 24, 1892.

By F. C. Hubbell, President of the
Des Moines Union Railway Co.
and Horace Seely, General Superin-
tendent of the Des Moines Union Rail-
way Company.

That the names of the officers of the Company for the year ending January 1, 1893 are stated to be as follows:

President,	F. C. Hubbell, Des Moines, Iowa
Secretary,	F. M. Hubbell "
Treasurer,	H. D. Thompson "
General Superintendent,	J. A. Wagner, "
Auditor,	E. G. Mitchell, "

This report contained a schedule 5 similar in form to schedule 5 in the said report of December 31, 1888, and contained no report under schedule 5 except the following:

"General Remarks".

"The Des Moines Union Railway Company is simply a representative company, acting as an agency for the Wabash R. R. Co., and the Des Moines, Northern & Western R. R. Co., performing all necessary work for them, and charging each at actual cost, its due proportion thereof incurred."

And that said report was signed and verified on February 28, 1893.

By A. B. Cummins, Vice-President of the Des
Moines Union Ry. Co.
and J. A. Wagner, General Superintendent of
the Des Moines Union Ry. Co.

That the names of the officers of the Company for the year ending January 1, 1894, are stated to be as follows:

President,	F. C. Hubbell, Des Moines, Ia.
Vice-President,	A. B. Cummins, "
Secretary,	F. M. Hubbell, "
Treasurer,	H. D. Thompson, "
General Superintendent	J. A. Wagner, "
Auditor,	E. G. Mitchell, "

This report contained a schedule 5 similar in form to schedule 5 in the said report of December 31, 1888, and contained no report under schedule 5 except the following:

"General Remarks"

"The Des Moines Union Railway Company is the owner of the property hereinbefore described, and in addition to leasing the same to the Wabash Railroad Company, the Des Moines, Northern & Western Railway Company, and the Chicago Great Western Railway Company, performs certain services for these companies and collects from them as rental and for such services, the aggregate amount of its expenses, which expenses are paid by the several railway companies in proportion to the use of the property and services rendered, as provided by contracts existing between this company and the said Wabash Railroad Company, Des Moines, Northern & Western Railway Company, and Chicago, Great Western Railway Company."

And that said report was signed and verified on February 16, 1894.

By A. B. Cummins, Vice-President of the
Des Moines Union Ry. Co.
and J. A. Wagner, Superintendent of the
Des Moines Union Ry. Co.

It is also agreed that the foregoing abstracts of said annual reports shall be copied into the record in said cause, in lieu of the original certified copies of said reports, which certified copies are referred to in another stipulation of counsel herein, as plaintiff's exhibits, numbered 31, 32, 33, 34, 35 and 36. Either party shall have the right, at any time prior to the final hearing to make such objections to the foregoing extracts from said reports as might have been made to the original reports.

WELLS H. BLODGETT,
JOHN C. COOK,

Solicitors for Complainant.

GUERNSEY, PARKER & MILLER,
Solicitors for Defendant.

In the Circuit Court of the United States Southern District
of Iowa, Central Division.

Chicago, Milwaukee & St. Paul Railway Company, and the
Wabash Railroad Company, Complainants,

vs. In Equity.

Des Moines Union Railway Company, Frederick M. Hubbell,
Frederick C. Hubbell, and F. M. Hubbell & Son, De
fendants.

Appearances:

Cook, Hughes & Sutherland, E. R. Mason, J. L. Minnis,
Wells H. Blodgett, Attorneys for Complainants.

Guernsey, Parker & Miller, Solicitors for Defendant.

Testimony on the part of Complainants, taken before me, J. P. Blaise, one of the Examiners herein, pursuant to the Stipulation and agreement hereto attached, at the office of Guernsey, Parker & Miller, in the City of Des Moines, Polk County, Iowa, January 10, 1911, in a certain cause, pending in the Circuit Court of the United States, Southern District of Iowa, Central Division, wherein Chicago, Milwaukee & St. Paul Railway Company, and Wabash Railroad Company are Complainants, and the Des Moines Union Railway Company, Frederick M. Hubbell, Frederick C. Hubbell, and F. M. Hubbell & Son, are defendants, on the part of Complainants.

Index.

Name.	Direct.	Cross.	Recall.	Ex's etc.
Charles F. Loeth	9	14	22	
A. H. Loudermilk	25	40		
M. A. Hills	45	56		
C. W. Gooch	65	72		
E. W. Raymond	73	79		
G. C. Wise	82	85		
James Saguin,	86	89		
Ed Mellin	91			

Amended & Sub. Art. Des Moines N. W. Ry Co.....	2
Art. of Inc. St. Louis D. M. & N. W. Ry. Co.....	6
Stipulation.....	94
E. C. Kinney deposition.....	24

Complainants' Testimony.

Amended and Substituted Articles of Incorporation of the Des Moines Northwestern Railway Company.

Mr. Cook: Complainants offer and introduce in evidence the Amended and Substituted Articles of Incorporation of the Des Moines Northern Railway Company, which are in words and figures following:

"Amended and Substituted Articles of Incorporation of the Des Moines Northwestern Railway Company.

Article 1.

The name and style of this corporation shall be The Des Moines Northwestern Railway Company and its principal place of business shall be Des Moines, Iowa. Provided that

any meeting of stockholders or directors may be held in the City of New York upon call of the Executive Committee.

Article 2.

The general nature of the business of the corporation shall be the owning, extending, constructing and operating or constructing and leasing of a railway from the City of Des Moines, Iowa, to the northern line of the state of Iowa with a branch to Sioux City, Iowa, and such other branches as may from time to time be determined upon by the Company.

The power to lease the road at any stage of its construction is hereby expressly asserted and claimed.

This corporation shall further possess all the powers rights and immunities conferred by law upon corporations for pecuniary profit.

Article 3.

The capital stock of this corporations shall be Four Millions of Dollars which shall be divided into shares of one hundred dollars each all of which shall be liable to payment at such times and in such manner as the Board of Directors may from time to time determine. The entire capital stock or any part thereof may at the discretion of the Board of Directors be issued for the purposes of carrying out the objects of this incorporation and may be paid for in work done or material furnished in the construction of the road, Provided that the amount of Capital Stock issued shall never at any time exceed Twelve Thousand Dollars, for each mile of completed road.

Article 4.

Each share of stock shall be entitled to one vote at any meeting of the stockholders upon presentation of a certificate therefor, Provided that no transferee shall be entitled to vote unless the certificate of stock so held by him shall have been duly transferred on the Books of the Company at least sixty days before the meeting at which it is sought to be voted.

Article 5.

For the payment of debts or to aid in the construction of the Railroad the directors by a two-thirds vote of the entire board in favor thereof may issue preferred stock drawing interest at the rate of not more than seven per cent per annum.

Article 6.

The affairs of the Company shall be managed by a Board of not less than five (5) nor more than nine (9) directors who shall be annually by the stockholders on the first Thursday in January of each year.

The shall have the power and are hereby invested therewith, to take all steps necessary to construct and operate said railroad, and its branches or to lease the same in perpetuity or otherwise, at any stage of its progress upon such terms and conditions as they may deem advisable if in their judgment the purposes of this incorporation shall be better promoted thereby.

They are hereby further authorized, for the purpose of enabling them to fund the bonded debt of the Company at a lower rate of interest and on longer time and pay off its floating debt and to extend and equip its road and otherwise carry out the objects of this incorporation to execute a mortgage upon the road, franchises and other property of this Company to the amount of not less than seven thousand (\$7000) dollars a mile to secure the bonds of the Company or other evidences of indebtedness of a like amount approved by the board and to issue full paid stock to the amount of not less than Ten Thousand Five Hundred (\$10,500.) Dollars a mile all of which bonds or other evidences of indebtedness and stock together with all subsidies, taxes, gifts and donations which may be obtained to aid in the construction of the road they are empowered and directed to transfer to such corporation or individual as they may elect for the purposes aforesaid.

And they are hereby invested with all the other powers usually possessed by directors of similar corporations.

A majority of the board shall constitute a quorum and in the event of the death or resignation of a member the remaining members may fill the vacancy thus occurring. Provided that a two-thirds vote of the full board shall be necessary to fill a vacancy.

The directors shall elect from their number a President, Vice-President, Secretary and Treasurer. The present officers are hereby continued in office until their successors are duly elected.

Meetings of the Board may be held at any time upon the call of the President or in his absence, of the Vice-President, or two members of the Executive Committee.

Article 7.

The President, Vice-President, Secretary and Treasurer shall constitute an Executive Committee who shall have power to make contracts binding upon the corporation and shall be entrusted with the immediate management of the affairs.

They shall be authorized to act for the Company in all matters affecting its interests and their undertakings as such Committee shall be valid and binding to the same extent as would those of the full board of directors.

Article 8.

The private property of stockholders shall be exempt from liability for corporate debts and undertakings.

Article 9.

All contracts and certificates of stock shall be signed by the President and countersigned by the Secretary.

Article 10.

The total amount of indebtedness to which the corporation may subject itself shall never exceed eight thousand dollars per mile of the road or two-thirds of the capital stock.

Article 11.

These articles may be amended at any meeting of the stockholders ten days notice of such meeting having been given by publication in some newspaper at the principal place of business of the Company, provided that a majority of all the stock subscribed and issued shall be voted in favor of such amendment.

Amendments of the same may also be made without publication of notice by the unanimous vote of the board of directors.

Article 12.

This incorporation shall commence on the 11th day of April, 1878, and continue for fifty (50) years, with the right of renewal.

State of Iowa,
Polk County.

We, J. S. Polk, president & John S. Runnells, secretary, of the Des Moines Northwestern Railway Company, do hereby certify that the above & foregoing amended & substituted articles of incorporation were adopted by the directors of said Company on the 20th day of December, 1880, at a meeting of said Board of Directors duly called and held at the office of Company in Des Moines, Iowa, by a unanimous vote of said Board of Directors, all of said board of Directors being present and voting for the same.

Witness our hands & the seal of said company hereto affixed
this 23rd day of December, A. D. 1880.

J. S. POLK, Prest.

Attest:

J. S. Runnells, Secretary.

(Company seal)

Filed Dec. 27, 1880, 11 1/4 o'clock A. M. Geo. H. Gardner,
Recorder. By A. Jones, Deputy.

State of Iowa,
Polk County—ss.

I, Mrs. Frank W. Dodson, Recorder of said County, hereby
certify that the foregoing writing is a copy from the original
record in my office, and the whole thereof, and recorded in
Book 2 at page 599 to 603 inclusive.

Dated at Des Moines, Iowa, this 10th day of December, 1909.

MRS. FRANK W. DODSON, Recorder.

Admission:

It is admitted, that on December 23, 1880, the date of said
Amended and Substituted Articles of Incorporation of The
Des Moines Northwestern Railway Company, the said Des
Moines Northwestern Railway Company owned and was oper-
ating a narrow gauge railroad, extending from Waukee in
Dallas County, Iowa, to Panora, in Guthrie County, Iowa.

Articles of Incorporation of the St. Louis Des Moines &
Northern Railway Company.

Mr. Cook: The Complainants now offer and introduce in
evidence the Articles of Incorporation of the St. Louis Des
Moines & Northern Railway Company, in words and figures
following, to-wit:

"Articles of Incorporation of the St. Louis Des Moines &
Northern Railway Company.

Art. 1. The undersigned, their successors and assigns, here-
by associate themselves together into a corporation to be known
as the St. Louis Des Moines & Northern Railway Company,
for the purpose of constructing, owning and operating, or
constructing and leasing a railway from the City of Des
Moines in Polk, County, Iowa, or a connection therewith,
through the County of Boone, or County of Story, toward the
north line of the state of Iowa, upon such route as may be

deemed advisable for the best interests of the company, and such corporation shall possess all the powers conferred by law upon corporations for pecuniary profit. It shall be further authorized to make a contract for the construction of said railway with the Narrow Gauge Railway Construction Company, a corporation organized under the laws of the state of Iowa, and as a consideration for such contract is authorized to execute and deliver to said Narrow Gauge Railway Construction Company its bonds to the amount of Eight Thousand Dollars (\$8000.00) per mile or less, and its capital stock to the amount of Twenty Thousand Dollars (\$20,000) per mile or less together with all subsidies and taxes voted in aid thereof as may be deemed necessary for the prosecution of the work herein provided for.

Art. 2. The capital stock of this corporation shall consist of Three Million Dollars (\$3,000,000) to be divided into shares of One Hundred Dollars (\$100) each, each share shall be entitled to one vote at all meetings of the corporation.

Art. 3. The principal place of business shall be at Des Moines, Iowa.

Art. 4. The affairs of the Company shall be managed by a board of five directors, who shall be elected annually by the stockholders on the first Thursday in January.

The provisional board of directors who shall hold office until the first Thursday in January, A. D. 1882, shall consist of J. S. Polk, J. S. Clarkson, F. M. Hubbell, J. S. Runnells, and Frank S. Pusey. The directors shall have all the powers usually possessed by directors of similar corporations. A majority of the board shall constitute a quorum, and in the event of the death or resignation of a member of the remaining members may fill the vacancy thus occurring.

The directors are hereby further authorized to execute a lease of the road in perpetuity or otherwise, when it shall have been constructed.

The directors shall elect from their number a president, vice-president, secretary and treasurer.

Meetings of the board may be held at any time upon call of the president, or in his absence of the vice-president, or any two members of the board.

Art. 5. The president, secretary and one member of the board of directors shall constitute an executive committee, who shall be entrusted with the immediate management of the affairs of the company, and shall be authorized and empowered

to make contracts binding upon the company to the same extent as the full board of directors.

Art. 6. The private property of the stockholders shall be exempt from liability for corporate debts and undertakings.

Art. 7. The highest amount of indebtedness to which the corporation may at any time subject itself shall never exceed Eight Thousand Dollars (\$8000) per mile of its road.

Art. 8. All contract and certificates of stock shall be signed by the president and countersigned by the secretary.

Art. 9. These articles may be amended by a vote of two-thirds of all shares of stock subscribed in favor of the proposed amendment upon publication of notice of meeting at which such amendment shall be proposed, at least thirty days before the date thereof in some paper published at Des Moines. Amendments may also be made without publication of notice by the unanimous vote of the board of directors whenever they shall convene on the call of the president or vice-president.

Art. 10. This corporation shall commence on the day of April, A. D. 1881, and continue fifty years with the right of renewal.

In witness whereof we have hereunto set our names this day of April A. D. 1881.

J. S. POLK,
J. S. CLARKSON,
F. M. HUBBELL,
J. S. RUNNELLS.

State of Iowa,
Polk County—ss

Before me a notary public in and for the county and state aforesaid, on this 4th day of April, A. D. 1881, personally appeared J. S. Polk, J. S. Clarkson, J. S. Runnells and F. M. Hubbell, to me personally known to be the identical persons who executed the foregoing articles of incorporation, and acknowledged the execution thereof to be their voluntary act and deed, for the purposes therein expressed.

Witness my hand and Notarial Seal the day and year last above mentioned.

(Notarial Seal)

C. HUTTENLOCHER,
Notary Public.

Filed April 6th 1881 at 4½ o'clock P. M.

J. J. PAYNE,
Recorder.

Charles F. Loeth.

Mr. Cook: Complainants offer and introduce in evidence the the direct examination of Charles F. Loeth, as appears in the transcript of the evidence on file in the office of the Clerk of the District Court of Iowa in and for Polk County, in the case of Chicago, Milwaukee & St. Paul Railway Company vs. Des Moines Union Railway Company, beginning on page 92 of said transcript and ending at page 97, as follows:

"CHARLES F. LOETH called and sworn on the part of plaintiff and examined in chief by Mr. Charles E. Vroman, testified as follows:

Q. Your residence? A. Chicago.

Q. And your occupation? A. Civil engineer.

Q. How long have you been in that occupation?

A. About thirty years.

Q. Are you connected with the Chicago, Milwaukee & St. Paul Railway Company? A. Yes, sir.

Q. In what capacity?

A. As engineer and superintendent of bridges and buildings.

Q. How long have you been superintendent of the bridge and building Department?

A. Nearly nine years.

Q. Were you in Des Moines employed here at the time of the construction of the St. Louis, Des Moines & Northern Company's line? A. I was.

Q. Do you remember when you came? A. In May 1881.

Q. And for what purpose?

A. As an engineer to assist Mr. E. C. Kinney in the construction of the road.

Q. What condition did you find when you arrived here as to the construction work?

A. I do not remember that any work had been done at that time further than the making of surveys.

Q. Do you remember when that work commenced? About how long after you got here?

A. You refer to actual construction work?

Q. Yes?

A. No, I do not remember definitely. It must have been two or three months.

Q. As long as that you think?

A. Well, perhaps not as long as that, but some little time.

Q. Do you remember what the first construction work was and where it began? A. No, I do not.

Q. Well do you remember approximately where the construction work began?

A. You mean the first work that was done?

Q. Yes, actual work either clearing the right of way or whatever was done?

A. No, I couldn't say what work was done first.

Q. Where was the construction? From what point in the City of Des Moines?

A. It was say, from the vicinity of the present Union Depot extending westward.

Q. Well, it is conceded that is Fifth Street, is it not?

Mr. Guernsey: Yes; here is Fifth Street.

Mr. Vroman: And extended from there west?

A. Yes, sir.

Q. What was the character of the construction at that time? Narrow or standard gauge?

A. A narrow gauge road was being built.

Q. How long were you here engaged in work on that line?

A. About ten months.

Q. You may state what progress was made in the construction of the line from the time you begun?

A. When I came here the work of making survey and acquiring right of way was in progress and it was some time after that, I do not remember just how long the construction work began. I do not remember at what point the construction began first, but construction work in the way of grading, clearing of the right of way, building of bridges and laying of tracks and building of buildings was more or less under construction and I would say more or less completed at the time I left.

Q. Where was the bridge built at the east part of the line?

A. At the water works in the western part of the city.

Q. A little stream? A. A little creek.

Q. Up to what point was the road constructed when you left, ten months later?

A. It was completed to Waukee and the line to Boone was completed up to the vicinity of the High Bridge. I think the High Bridge was complete but I am not sure about that. But the track was laid up to about that point and the bridge was approaching completion if not fully completed.

Q. And where was High Bridge located?

A. Across the Des Moines River between here and Boone.

Q. You say completed, you mean the main line track was laid?

A. Between here and the bridge, yes, sir.

Q. And between here and Waukee? A. Yes, sir.

Q. Was the line in operation?

A. Yes, it was in operation. It was to the extent it was being used, I do not know that it was regularly operated for traffic purposes, but my impression is it was.

Q. Do you remember the bridge that was built down at this little dry run? Do you remember any circumstances connected with it? A. Yes, sir.

Q. You may state them?

A. I remember that that was the first work that was done by our bridge contractors, Raymond & Campbell, Council Bluffs. We had laid the track over that stream by temporary construction in order that we might get out construction trains as far out on the completed grade as possible and lay out tracks and the construction of that permanent bridge was a part of the contract of Raymond & Campbell and I remember going out on the ground with Mr. Raymond with his men in order to do what I could to insure the putting in of a permanent bridge as quickly as possible with just as little interference with the traffic over the track as possible.

Q. At the time you began your work here was there any broad gauge line running in from the east at that time?

A. Yes; the Rock Island and Burlington I think.

Mr. Guernsey:

Q. Des Moines Valley? A. I don't remember.

Mr. Vroman: Do you know of a railroad company called the Des Moines & St. Louis?

A. Yes, sir.

Q. Do you know where it was building a line and between what points?

A. Between Albia and Des Moines.

Q. Now when—at what time were they building this line with reference to the time the line of the St. Louis, Des Moines & Northern was under construction?

A. About the same time.

Q. Where did that line commence the work of building?

A. I couldn't say.

Q. Did it commence in Des Moines or in Albia or in what direction?

A. I couldn't say, except it was not in Des Moines.

Q. Was that line in Des Moines when you came here and commenced the constructing of the line of the St. Louis, Des Moines & Northern?

A. No, sir.

Q. Was there any board gauge track on the right of way from Fifth Street down say to Farnham street at the time the narrow gauge tracks were laid?

A. There was before I left.

Q. Do you know whether the narrow gauge was put down there first or the broad gauge?

A. The narrow gauge.

Q. The narrow gauge was put down first?

A. Yes.

Q. Was this broad gauge construction which was put down before you left a part of the Des Moines St. Louis line?

A. I think it was. It was done by the—I did not understand that question. I thought you said the other company.

Q. Was the broad gauge construction that was put in before you left a part of the Des Moines & St. Louis line?

A. I don't know about that. It was put in in anticipation of that line being completed into the City of Des Moines and connected with the St. Louis, Des Moines & Northern.

Q. Was the main line at the time this broad gauge construction was put in on the narrow gauge right of way then into Des Moines? Built into Des Moines?

A. No, sir.

Q. Was this—how was this broad gauge construction built whether it was built upon the same ties on the right of way or how?

A. It was built upon the same embankment and the same ties, three rails being laid on the same ties.

Q. How far down did that broad gauge construction go going west?

A. I cannot say definitely, but not as far as the water works.

Q. Do you remember a round house being constructed while you were here?

A. Yes, sir.

Q. Did the broad gauge extend to the round house?

A. That is my remembrance.

Cross-Examination.

Mr. Guernsey: In connection with that offer, the defendants offer in evidence the cross-examination of this witness, commencing at page 97, and continuing to the middle of page 102, including in the offer such exhibits, if any, as were identified in connection with said cross-examination, as follows:

Q. Mr. Loweth you were here about ten months you say?

A. Yes, sir.

Q. And you left about March, 1882?

A. Yes, sir.

Q. And how long have you been employed by the Milwaukee Company plaintiff?

A. Nine years next month.

Q. Now you came here you say in May. Did Mr. Kinney bring you here?

A. Mr. Kinney sent for me and I came at his request.

Q. And while you were here you were employed by the Narrow Gauge Railway Construction Company?

A. I was employed by the St. Louis, Des Moines & Northern Railway and there was an intimate connection that I perhaps I never fully understood or have forgotten between that and the Narrow Gauge Construction Company.

Q. Who paid you your wages?

A. The St. Louis, Des Moines & Northern Railway.

Q. You remember you signed vouchers for that?

A. Yes, sir.

Q. Suppose it should develop these vouchers run to the Narrow Gauge Construction Company, do you still say it was somebody else that paid you?

A. No, sir.

Q. You would say you were mistaken?

A. Yes, sir.

Q. They were paid at Polk & Hubbell's office, were they not? A. As a rule yes I think they were.

Q. Where were they paid when they were not paid there?

A. Well, I don't remember about that. You refer to the vouchers in payment of my own services?

Q. You used to make out vouchers that covered your services and also expenses of your work. You used to have some board bills naturally and things like that?

A. Yes, sir.

Q. And you had some men under you?

A. Yes, sir.

Q. And you made out vouchers once a month, did you not?

A. I presume I did.

Q. And you were paid by whoever was employing you?

A. Yes, sir.

Q. And these vouchers were made out at and paid at the office of Polk & Hubbell were they not?

A. Generally they were.

Q. You say generally. Where else were they paid?

A. I remember distinctly of my taking pay rolls out into the country and paying the men that were employed on the work at various times so that all the payments of vouchers which I certified to were not paid in Polk & Hubbell's office.

Q. I was asking about your vouchers. When you took out pay rolls, where did you get those pay rolls?

A. At the office of the Company.

Q. Whose office was it? Polk & Hubbell's office?

A. Polk & Hubbell, as I remember it had an office for their own business and St. Louis Des Moines & Northern. I do not know who paid the office rent.

Q. It was Polk & Hubbell's office where you got these things as a matter of fact?

A. Yes, sir.

Q. And when you got a pay roll to take out over the road you got it from Polk & Hubbell's office.

A. I presume I did.

Q. And you got the money to pay it from Polk & Hubbell or from their office?

A. I presume so.

Q. This broad gauge line, the Des Moines & St. Louis, had not been built in here when you left, is that right?

A. I don't remember about that.

Q. Then you have no recollection of it being built in here before you left, is that correct?

A. That is correct.

Q. But you do remember a third rail being laid?

A. Yes, sir.

Q. In anticipation of their coming in?

A. Yes, sir.

Q. You also remember this little bridge west of the water works? A. Yes, sir.

Q. Do you remember afterwards when you were employed by the—while you were in the employ of the Milwaukee of condemning that bridge and requiring the Des Moines Union to build another one there? A. I do not.

Q. You do not remember anything about that?

A. No, sir.

Q. Do not remember of writing any letters about it?

A. In my office there are about ten or twelve persons who write letters over my signature, and it is not to be surprised at if there are some letters I do not have any remembrance of. I do not remember any instance of that kind.

Q. Has the bridge been rebuilt?

A. I couldn't say.

Q. You do not know about that? A. No, sir.

Q. You do not know whether the bridge there now is the bridge we are talking about or not?

A. The bridge that was built originally was 29 years ago and a timber bridge.

Q. In the natural course of events that would have been rebuilt? A. Yes, sir.

Q. That is an inference however? A. Yes, sir.

Q. When you go out look for it and you will see there is a concrete bridge there. Now what part of the work did you have charge of or did you do? Location or construction or both?

A. When I came first I made some surveys to determine the land lines. The points where the located lines intercepted with property lines. Made some maps and later made plans for various structures, bridges and other structures of that

kind. Principally my duties were in the office though. I was frequently out along the line at these places where the work was being constructed.

Q. Your work was principally office work during the entire time you were here? A. Perhaps half the time.

Q. Do you remember this. Do you remember you used to get your material from the Rock Island, four or five blocks west from where the passenger station was and where the Union station is now? A. Yes, sir.

Q. And is it not that where you began laying your rails? Where you got this material. The rails came in over the Rock Island? A. I think so.

Q. And as a matter of convenience did you not begin laying your rails there? A. I presume we did.

Q. And where was your office at that time. Was it in this building just north of the Post office here?

A. At first, yes, sir.

Q. That was the same building in which Polk & Hubbell had their office? A. Yes, sir.

Q. And they owned the building?

A. I do not know about that.

Q. Who was the president of the St. Louis Des Moines & Northern at this time?

A. I do not remember. I think it was either Mr. Clarkson or Mr. Polk.

Q. And did it have any superintendent?

A. Well no not when I came here.

Q. Did it before you came—did it before it began to operate? A. I do not think so.

Q. Any manager?

A. No, I think Mr. Kinney was the executive man in charge of not only the construction, but the laying of the track from 1881 to about the first part of 1882, I do not remember. I am not certain about that.

Redirect Examination.

Mr. Cook: Complainants also offer and introduce in evidence the Redirect Examination of said witness, on page 102, as follows:

Q. Do you remember when the line was finished into Waukeg? A. As to the time of year in which it was done?

Q. Yes, and month?

A. I cannot remember the month but it was the latter part of the summer or early fall.

Q. Your office at that time—I mean the office of Polk & Hubbell at that time and of the Narrow Gauge Railway Construction Company and of the St. Louis, Des Moines & Northern were all the same? A. Yes, sir.

Recross Examination.

Mr. Guernsey: The defendants offer in evidence the recross examination of this witness, commencing on page 102, and ending on page 105, and such exhibits, if any, as were identified in connection with said recross examination, as follows:

Q. Where was Mr. Clarkson's office?

A. I do not remember whether Mr. Clarkson had an office other than in the State Register or not. I think he was connected with the State Register at that time.

Q. Now then he was the president of the St. Louis, Des Moines & Northern was he not?

A. I am not sure about that. I think he was.

Q. Now then why do you say that the office of the St. Louis, Des Moines & Northern was the same as Polk & Hubbell's office? How do you know the St. Louis Des Moines & Northern had any office?

A. Because the larger part as I remember it of all the stationery, rolls and vouchers we used had the St. Louis, Des Moines & Northern Railway on it.

Q. Did you ever see any of those vouchers that had Narrow Gauge Railway Construction Company on it?

A. Yes, sir; I did.

Q. And where was the Narrow Gauge Railway Construction Company's office?

A. What office do you mean? The engineer's office?

Q. Just take it in the same sense you take the question of where the office of the St. Louis, Des Moines & Northern was. You had no trouble with that. Where was the Narrow Gauge Railway Construction Company's office?

A. With the St. Louis, Des Moines & Northern Railway.

Q. And that is with Polk & Hubbell? A. Yes, sir.

Q. Now all you know about that as a matter of fact is that you went to Polk & Hubbell's office to transact this business is it not?

A. No, sir; I didn't Polk & Hubbell's office or Polk & Hubbell. I went to the office of the St. Louis, Des Moines & Northern or the Narrow Gauge Construction Company. I had never—I do not remember of ever having any business with Polk & Hubbell.

Q. You mean as a firm? A. As a firm yes, sir.

Q. You went to the office of the people that paid you?

A. Yes, sir.

Q. And your inference that it was the office of the St. Louis Des Moines & Northern is based on the idea that the St. Louis Des Moines & Northern paid you is it not?

A. Yes, sir.

Q. If you are wrong about that then you are wrong about the office too are you not?

A. No, not necessarily.

Q. What was there about this thing if it was the Narrow Gauge Railway Construction Company that was doing all this work and if I am right about that and if Mr. Clarkson was president and chief executive of the St. Louis, Des Moines & Northern and did not have his office in this one you refer to what was there that refers to your inference that this office where Polk & Hubbell kept that it was the office of the St. Louis, Des Moines & Northern Railway Company?

A. Because right of way was acquired in the name of the St. Louis, Des Moines & Northern Railway Company. Because it was my business to make maps and I made them and the title on them was the St. Louis, Des Moines & Northern Railway.

Q. It was because of what you saw on the maps?

A. Because of what I was instructed to put on the maps.

Q. What name was on the door of this office? Polk & Hubbell? A. I do not remember.

Q. There was not the name of the St. Louis, Des Moines & Northern Railway Company?

A. There was in the office we had on the present depot site.

Q. I am not asking you about that.

A. That was as much the office as the building across from the post office.

Q. Was this place at the station where you were paid? Where you got your money?

A. I don't know about that. We may at times have got money there.

Q. That was a little proposition that developed after you had got pretty well along with your work was it not?

A. No, sir; that was a proposition that developed as soon as we got so far into the construction we had to have larger quarters.

Mr. Guernsey: The defendant also offers in evidence the additional cross-examination of said witness Loweth, commencing on page 106 of the said transcript and ending on page 107 thereof, and also offers in that connection "Exhibit B" to the Deposition of Mr. E. C. Kinney referred to on said cross-examination, as follows:

"Charles F. Loweth recalled for further cross-examination by defendant and examined by Mr. N. T. Guernsey, testified as follows:

Q. Here is a duplicate voucher which is headed St. Louis, Des Moines & Northern Railway Company, the Narrow Gauge

Railway Construction Company contractors. Is that the way your vouchers are made out? I see your name appears on that and it is for the month of July, 1881?

A. Yes, sir; this is my remembrance of it and I think this is what I stated that the rolls and vouchers and other stationery had the name of the St. Louis, Des Moines & Northern Railway and invariably I think that was more prominent than the Narrow Gauge Railway Construction Company. The general impression--

Q. I do not ask for any impression. Was it your impression then and do you wish to testify now you were being paid, not by the contractors who were doing the work, but by the people for whom they were doing it?

A. Well I don't know that I ever went into that very fully. All that I had to go by was what is right here in print. It answers for itself.

Q. (Question read to witness) A. I do not know.

Q. You wish to leave the record standing here you don't know whether you were working for the Narrow Gauge Railway Construction Company that were building the road or whether you were working for the railroad company. Is that right? A. That is right sir.

Mr. Guernsey: I would like to identify this voucher. This voucher I call to your voucher is attached to the deposition of Mr. Kinney and is marked by the reporter, Exhibit "B". That is right is it?

A. Yes, sir.

Witness Excused."

(Exhibit "B" offered in connection with the cross-examination of the above witness is attached to the deposition of E. C. Kinney, which Complainant's Counsel asked the examiner not to copy, as the same was on file in this cause and a part of the record)

Mr. Cook: Complainants offer and introduce in evidence the deposition of E. C. Kinney, taken and on file in the said cause in the state court.

Mr. Guernsey: The defendants offer in evidence the cross-examination of the witness Kinney, and the exhibits identified in connection with said cross-examination.

The defendants also offer the following in that connection, from page 107 of the said transcript in said cause of the Chicago, Milwaukee & St. Paul Railway Company vs. the Des Moines Union Railway Company:

"The copy that was shown in connection with Mr. Kinney's deposition in response to question as follows: 'Do you remember ever going over accounts and certifying them' that immediately follows the statement 'accounts was it not Mr. Kinney' and the answer 'I do not remember it might be so, if that is my signature I will admit it'. 'At that time Mr. Lehman who appeared in the taking of this deposition for the defendant handed Mr. Kinney a copy of what purported to be a certificate signed by Mr. Kinney in typewriting and the name C. E. Kinney was in typewriting."

A. H. Loudermilk.

Complainants offer and introduce in evidence the examination in chief of A. H. Loudermilk, commencing at page 109 of the said transcript, and ending near the bottom of page 124 thereof, as follows:

"A. H. LOUDERMILK, called and sworn on the part of the plaintiff and examined in chief by Hon. J. C. Cook, testified as follows:

Q. Give your age, name present place of residence and occupation? A. 62.

Q. First the name.

A. A. H. Loudermilk, 62; 1511 School Street.

Q. Des Moines? A. Des Moines, Iowa.

Q. What is your occupation? A. Bridge Builder.

Q. How long have you lived in the City of Des Moines?

A. About thirty years.

Q. Did you do any work in connection with the building of the Narrow Gauge Railroad from Des Moines to Boone?

A. I did?

Q. When did you begin working on that line?

A. Well, I can't give the date exactly, but it was when we commenced cleaning out the alley south of Cherry Street here up to—well I can't say from 5th street on up to the pumping station. Perhaps not quite that far up, but up as far as 12th street at that time we had more or less cleaning.

Q. About what time of the year did you begin?

A. I don't remember whether it was in the spring or early in the summer.

Q. What company or corporation were you employed for?

A. The St. Louis, Des Moines & Northern.

Q. Was that the company that built the narrow gauge railroad from Des Moines to Boone?

A. That was the way I understood it.

Defendant moves to strike the answer as a conclusion and incompetent.

Q. Is that the name that the Company went by, St. Louis Des Moines & Northern?

Same objections.

A. Yes, sir.

Q. You say you began the work of clearing away along the alley beginning at 5th street in Des Moines and extending westward through the city?

A. Yes, sir. That is the work commenced there. I do not know just where I commenced. In fact I did not work but a few days cleaning out the alley. At that time I was under Jim Martin and I was always called a pretty good mechanic and I was taken off of that work and put into the shop in a very few

Q. Where was the shop located.

A. It was then in an old frame building up on 11th street. It was just a building that had been pulled out of the way and we went in there for a temporary matter.

Q. What car was that you began to work in?

A. I think that was in 1880 if I am not mistaken.

Q. 1881?

A. I think it was the spring of 1880. I am not certain about that.

Q. Do you remember when that company began to receive material for the building of the road? Its iron and bridge timbers?

A. No, I couldn't tell you when they did commence.

Q. How soon after you began to work?

A. Oh, it wasn't but a short while. I want to state further. I didn't work for the St. Louis, Des Moines & Northern but a little while. Jim Martin and I didn't get along very well.

Q. Then who did you go to work for after you quit working for the railroad company?

A. I also had an offer of more money and I expect I was a little bit contrary myself and Jim was a little bit jealous and I all I had to do was to simply go and ask Mr. Raymond's foreman for a job and get more pay and he had asked me a dozen times to quit and possibly made me a little bit independent and I quit and went to work for Mr. Raymond.

Q. Was Mr. Raymond a member of the firm?

A. He was one of the contractors on the road that had the bridge building.

Q. What was the name of the firm?

A. Raymond & Campbell.

Q. They had the contract for building the bridges?

A. Yes, sir.

Q. About what time of the year did you begin working for them?

A. It was shortly after I commenced—I don't think I worked more than two or three weeks, maybe a month for the railroad company. I probably commenced in June for Raymond & Campbell would be the best of my judgment. I am not giving that as an exact date. It has been too long ago.

Q. When you went to work for Raymond & Campbell had any iron been laid at all? A. I don't think there had.

Q. For the Boone line?

A. No iron been laid at all I don't think.

Q. Do you remember what work you first did for Raymond & Campbell?

A. I think the first work I done was dressing some timbers. Some large timbers that went into the High Bridge road on the ground where the round house now stands.

Q. The High Bridge you mean the bridge between here and Boone across the Des Moines river? A. Yes.

Q. Do you remember anything of a little bridge at the water works? A. I do sir.

Q. Did you help construct that bridge?

A. I helped construct the bridge. now there was a temporary work put in there built up of ties that I didn't help do to the best of my knowledge and there was a bridge put in there of railroad ties and some timbers laid on that and the engine went over on that and it was there a little while and there came a heavy rain and the result was the high water took them all out and stopped the work west of there. Well, when that was the case Mr. Loweth came down there and got after all of us as the old saying is, right hot, to put in that bridge immediately and I had to collect all the force in then and went to that bridge and we got the driver in there and drove those pilings and put the bridge in the next time by driving piling, didn't rebuild the tie bridge at all.

Q. Was that while you was working for Raymond & Campbell? A. Yes, sir.

Q. About how far west of Farnham street in the city of Des Moines is that bridge?

A. I don't know exactly where Farnham street is.

Court: Sixteenth street.

Judge Cook: 15th street; or I will change that. How far from the city water works was that bridge?

A. It is right by the pumping station. It is the bridge that lets the waste water out from the pumping station that runs through under all the railroads there and down into what—into that pasture and Coon river.

Q. You mean the pumping plant of the water works, that pumping station? A. Yes, sir.

Q. What we ordinarily call the water works?

A. Yes, sir.

Q. What time of the year was that bridge put in?

A. That must have been put in early in the summer. That was after we cleared out. Some time in the summer.

Q. At the time that bridge was washed out and rebuilt by permanent work how far west of the bridge had the Narrow gauge track been laid?

A. I couldn't tell you.

Q. Had it gone some distance west of there?

A. Oh it was out a little ways west for I know it laid off the track gang entirely, because they couldn't get an engine over it. That was why Mr. Loweth came out and hurried things up so they was there but how far west—

Q. That laid off the track gang?

A. That stopped the track laying until we could get an engine over it. How far west I couldn't say but it couldn't have been a great way.

Q. Now when track laying began where did they begin the work of laying the track of the St. Louis, Des Moines & Northern Railroad Company. The narrow gauge track for the Boone line?

A. I don't know. Now whether they commenced down about Eleventh street or whether they commenced here I couldn't say.

Q. That is whether they commenced here at fifth street?

A. Yes, sir; I couldn't say.

Q. Are you certain it was as far east at least as Eleventh street in the city of Des Moines?

A. Yes, it was either there or here, I don't know which.

Q. It was either Eleventh street or here at Fifth street?

A. Yes.

Q. Do you remember a side track put in by the Rock Island a standard gauge track out about Eleventh or Tenth street?

A. I do sir.

Q. Whereabouts was that?

A. That came off of the Rock Island running north of the Rock Island and right down parallel with the Rock Island for the purpose of unloading stuff for this road.

Q. That is for this narrow gauge road?

A. Yes, sir. It was also used of the railroad company—by the St. Louis, Des Moines & Northern and also by Raymond & Campbell. I transferred the irons and timbers and piling and such as that that came in there for Raymond & Campbell. There was another man in charge of the company's stuff there.

Q. How far east of Eleventh Street was the narrow gauge track laid and the road built of the Boone line?

A. How far east was the narrow gauge track laid?

Q. Yes. That was 1881 the first work was done and in 1880.

A. I could not tell you exactly how far east it was laid, but the depot of the narrow gauge track was here on the corner of Fifth and Cherry street. That brick building on the corner was used for a depot. E. C. Kinney and Mr. Loweth's office was in the front room of that building and when I went out on the road and also shipped men out—it was part of my business—I invariably went there and out of the back end of that building to get on the train. There was a narrow gauge track laid further east than that even and that was, if I remember right and I think I am clear on that it did that only temporary for the railroad. Place of leaving empty cars and disposing of cars we didn't wish to use. My idea is that virtually the end of the track was at Fifth street. Now that is virtually the end of the track still. I think there was a narrow gauge track further than that, but as I state just what we call waste rails put in.

Q. But the construction trains of the Boone line came here to the depot building at Fifth Street and Cherry?

A. Yes, sir.

Q. And started from there out on the road for their work?

A. Yes, sir. Now I remember an instance of bringing in a man with a leg broke from the High Bridge. I happened to be up there when it occurred and Raymond & Campbell gave me charge of that man and asked me to care for him and I was then boarding on 8th and Cherry with Miss Tomley and I got the train to stop right opposite that house on 8th and Cherry for the purpose of taking this man with the broken leg off and the train afterwards came on down here to Fifth Street and they wouldn't let any other passenger off there except two or three men that got off to help me take Mr. Oninn off. They did that as an accommodation.

Q. About what time of the year was that?

A. That was in the spring perhaps of 1881 I expect. The river when he fell was full of floating ice I know and we thought he was very fortunate, he went into the water and didn't hit the ice.

Q. So you may not be in error on dates, there is no question the road was begun in 1881 and was completed in 1882.

A. Yes, sir, it was not completed the same year it was begun.

Q. Now do you remember when the High Bridge across the Des Moines river on the Boone line was completed? When it was begun and when it was finished?

A. Well it was commenced I think in 1881 and finished in 1882, perhaps.

Q. Do you remember what the state of the work was—or whether the work on that bridge or on the railroad was stopped some time in the winter of 1881 and 1882? A. It was.

Q. About what time in the winter with reference to the holidays?

A. I think it was stopped just before the holidays and the work I don't think was opened up again until well towards spring.

Q. What was the state of the work on High Bridge at the time the work was stopped in the winter?

A. Well it is pretty hard to describe it.

Q. In a general way simply.

A. There was some framing done. The cylinders perhaps were some sunk and some not and probably there was some piling drove, I don't remember.

Q. By cylinders you mean the iron piers in the river?

A. Yes, sir.

Q. Do you remember when that bridge was completed?

A. That was completed in 1882, but just what time I couldn't say. It was in the fall though for I was out on the west end when it was completed and I know it was in the fall when I got home.

Q. How far had the track been laid towards Boone from Clive towards Boone when the work was stopped for the winter? A. I don't know.

Q. Was it close to the Des Moines river?

A. I couldn't say.

Q. Was your work that fall or that winter before the work was stopped, did you work on the bridge or work here?

A. I worked here. But we was hauling lumber from Polk City out, but whether that lumber had been shipped to Polk City before the track was laid or not I don't know. It looked like we would have shipped it from here had the track been laid, but perhaps lumber had been shipped to Polk City first so I couldn't say.

Q. At any rate the track was laid some distance north of Clive? A. On that there is no doubt about that.

Q. Now going to another branch. Do you remember when the bridge across the Des Moines River in Des Moines was built by the Des Moines St. Louis Company or the road running from here to Albia?

A. That was in 1882. Finished in 1882.

Q. Now this road from here to Boone was a narrow gauge road? A. Yes, sir.

Q. The road from Des Moines to Albia was a standard gauge road? A. Correct.

Q. When did the standard gauge road first do any work in Des Moines? I mean west of the river?

A. It came over in 1882 first. It must have been in the fall of 1882.

Q. Do you remember of anything such as a third rail being laid to some extent or for some distance on the west side of the river? A. I do.

Q. By the Des Moines & St. Louis Railroad?

A. It was laid from the east side or from where the end where this narrow gauge commenced down to a transfer on Eleventh street. There was a transfer put in there for the purpose of transferring cars off of the standard gauge on to a narrow gauge and vice versa. It was a patent for the purpose of raising the body of cars up direct and running the truck out and running the standard truck or narrow gauge truck whatever the case might be, under the cars, and letting it down and taking the device out and going on.

Q. Simply a device for changing trucks under cars?

A. Yes.

Q. That third rail you say was laid from about Eleventh street east to as far as the narrow gauge track had been laid before? A. Yes, sir.

Q. And this track, when was that laid, tell the court how you know? The time of year that third rail was laid?

A. Well, that rail might have been laid sometime before it was used. I couldn't say. But it wasn't used until in the fall of 1882.

Q. But do you remember when it was laid by the men who came here to lay it. That is by the ground being frozen or anything of that kind?

A. I remember when the transfer was put in or something near it, but I don't remember when the rail was laid.

Q. When was that transfer put in?

A. In the fall after it had commenced freezing—

Q. What year? 1882 did you say? A. Yes, sir.

Q. Did the road that was built from Albia to Des Moines have any track laid west of the Des Moines River until after—until in the year 1882?

A. It never had because the bridge wasn't in.

Defendant moves to strike that as a conclusion of the witness.

Q. Which bridge was first completed, the Boone line bridge across the Des Moines river up near Madrid or the Albia and Des Moines line bridge across the Des Moines line bridge in the City of Des Moines?

A. Well just to say it was completed was to say it was completed first I couldn't say, but the bridge across the Des Moines river west for the St. Louis, Des Moines & Northern

was used first. Sometimes a bridge may be used a good while before it is completed, but that bridge was first used first.

Q. Can you relate any circumstances that causes you to remember which bridge was built so that it could be used?

A. Why, yes, I think I can.

Q. All right.

A. They wanted some long ties up at that bridge and we was expecting them here and they telegraphed me to send them ties up. Well I went and hunted the yard over for the ties and failed to find them and they wanted—I don't remember how many now, but they give me the number and the invoicing I failed to find those ties.

Q. In what yard did you look for that?

A. In our yard on Eleventh street where the Rock Island put them.

Q. That is where the Boone line narrow gauge had its yard?

A. Yes; and I informed them they were not in the yard and they wired me at once to get them somewhere or other. I went over to this bridge here—the Wabash bridge.

Q. Here in Des Moines?

A. Yes, sir; and borrowed the ties from that company there and sent them up there and went and got a team and hauled them over here and loaded them on a car on Eleventh street.

Q. On which side of the river were those ties?

A. East side.

Q. How did you get them to the west side?

A. I just said I hired a team and hauled them over.

Q. Teamed over the wagon bridge?

A. Yes. And what makes me remember that distinctly when the ties came and I went and returned them I had went to J. D. Seeberger's over here on the corner of Sixth and Court Avenue and bought a new tape line. I measured those ties with that tape line and cut them off according to the length of that tape line.

Q. That was ties you were returning to the Albia line company for those you had borrowed?

A. That was the ties I was returning. And when I took the ties there I hauled them back and took them over and threw them down and they didn't pay no attention to them. When they went to use them those ties were eighteen inches too short. There was about fifty dollars worth of ties still there. The man that was in charge on the work on the Wabash was quite cranky and I don't know whether I was any better or not. I am not going to say about that. He came on to me right hot. He wanted the ties and he said I hadn't sent ties long enough. I said they are long enough. He said they are not. I said they are what your ticket called for and he had the tickets and showed me. He said they are not that long; I said they are and I said

I will show you they are that long and I took the tape line out of my pocket and measured the ties and they measured what I asked for, and he said that darn tape line isn't right. He took a steel tape out of his pocket and he measured my tape, it was a brand new line and God my tape line was eighteen inches too short.

Mr. Guernsey: Did you sue Seeberger for the \$50.00?

A. No.

Judge Cook: That was for the ties—

(Question withdrawn).

Q. When you say the Wabash, you mean the Des Moines & St. Louis Railway Company. The company that built the standard gauge between Albia and Des Moines?

A. Yes.

Q. At the time you returned these ties to that company, that Wabash Company had the ties been laid up on High Bridge?

A. They evidently had. I wasn't up there every day but every few days.

Q. These ties were to be used by this Wabash Company in its Des Moines Bridge in the city of Des Moines?

A. Yes, sir.

Q. What time of the year 1882 was that if you can remember from the state of the weather?

A. I couldn't say for the weather had been pretty warm to me that day. I was hot under the collar that day and that gentleman in charge of the bridge when he found the tape line was too sort said go throw that damn tape line into the river.

Q. That showed the ice was out anyhow? A. Yes.

Q. I would like if you could fix some time in the year when that occurred?

A. Well I don't think of anything that would enable me to give any idea of what time of the year that was.

Q. It was in 1882 you are sure?

A. It was evidently in 1882, yes, sir.

Q. Was it after work had been resumed on the Boone line?

A. Yes, sir. For at the time I was short of help here and I know I had been sending men up there as fast as I could get them and I was short of help here is why I know the work was going on up there.

Q. Do you remember when the permanent bridge at the water works was put in by the contractors, Raymond & Campbell? I believe you did say that?

A. It was probably in—might have been early in the summer and might have been late in the summer.

Q. Of 1881? A. Yes, sir.

Q. And Raymond & Campbell were bridge contractors on the Boone line? A. Yes, sir.

Q. So that there may be no misunderstanding about it. How long was the Narrow Gauge Railway built into Des Moines and down as far as Fifth street before the standard gauge road came into Des Moines from the east? That is in years or months?

A. Well I don't know. I think that it was—well there was one winter intervened between the two.

Q. And which was done first?

A. This was built first.

Q. That is the narrow gauge to Boone?

A. There was a house on the east side of the right of way that held up the work on that road for quite a while.

Q. That is held up the work on the Albia line?

A. Yes, sir; they had a great deal of trouble about a house and it was said they had a cannon planted over there to defend the house and the devil knows what all, I don't know and I know the men went over there. Jim Martin took his crew and went over there several times to pull that house out of the way.

Q. Was that trouble over there about getting the house out of the way for the railroad, was that long after this narrow gauge had been built from Fifth street to Clive?

A. Yes, sir; that was after this had been built.

Q. So that the narrow gauge was built west of the river about a year before the standard gauge from Albia came to this side of the river at all?

A. It must have been somewhere near a year because there was a winter intervened between the two.

Q. Do you remember whether a third rail was laid on the narrow gauge line west of the Des Moines river before the standard gauge road came across the river at all?

A. It was laid, yes, sir.

Q. About how long before the bridge across the Des Moines river was finished so that engines and cars could get over to the west side was it this third rail had ben laid out some distance on the narrow gauge tracks?

A. I don't know how long it was but that third rail was laid before they put in that transfer and that transfer was put in—it was ready when the cars came over.

Q. How far west of Fifth street in Des Moines was that third rail laid?

A. It was laid to Eleventh or Twelfth up there somewhere. Might have been a little bit beyond. I think that transfer was between Eleventh and Twelfth perhaps. Possibly about Twelfth street.

Q. Do you remember the round house or building for storing engines? Housing engines was built? A. Yes.

Q. For what company was that built and what year?

A. I don't know. I had nothing to do with it.

Q. Was that built in 1881 or 1882?

A. I think that was built in 1882. The first winter we was here they had no house for the engines. They was out of doors.

Q. Did this third rail extend as far west as that round house? A. It might have done it.

Q. Did that round house accommodate the engines both of the Boone line—the narrow gauge engines and the engines of the standard gauge? The Albia line?

A. I couldn't say. That was out of my line of business at that time.

Q. Do you remember whether the ground was frozen when the third rail was laid so they had to borrow a crow bar from you?

A. It was froze when they put in that transfer.

Q. How do you know it was froze. What causes you to remember that?

A. The men that was here putting in that transfer was bothering me all the time for crow bars to break the frost and I wanted to use them.

Q. Can you remember about what time of the year the narrow gauge track was laid between—from Fifth street west? The state of the weather?

A. No, I couldn't say, but it was some time in the summer.

Q. Summer of 1881?

A. Yes. Possibly it might have been early in the fall, but I don't think so.

Cross-Examination.

Mr. Guernsey: The defendants offer in evidence the cross-examination of said Loudermilk, as shown by the said transcript, commencing at the bottom of page 124 thereof and ending near the bottom of page 129 thereof, as follows:

Q. Now Mr. Loudermilk this was some time ago?

A. Indeed it was.

Q. And you were not fortunate enough to have something that kept you irritated all the time so as to impress all of these things on your mind?

A. A man that builds a railroad and don't have something is a dandy.

Q. Now so far as remembering which year it was, your impression was it was 1880? You took 1881 because Judge Cook tells you that?

A. I have this diary—that is the work and everything of the dates of the work and so on yet, but at the same time

there is nothing in that I thought was necessary to bring down here and it was only the dates, that would be all.

Q. You have not an independent recollection of these dates. You have to have somebody refresh your recollection just the way we do about that?

A. When this thing first came up to me I would have told the man I didn't know anything about, it, but studying it over a great many of these things come back to me.

Q. Did you ever hear of the Narrow Gauge Railway Construction Company? A. No, sir.

Q. Never heard of it.

A. I don't remember ever hearing of that.

Q. And it did not have anything to do with this work?

A. Not as far as I knew it didn't.

Q. Now the record here shows and the other witnesses have said that the Narrow Gauge Railway Construction Company built this road and not the St. Louis, Des Moines & Northern. Do you know which built it?

A. Nothing only just what I understood I was working for.

Q. Most of the time you were working for Raymond & Campbell?

A. Pretty near all the time, not quite.

Q. And they were independent contractors?

A. Yes, sir.

Q. Do you know whether they had their contract with the Narrow Gauge Railway Construction Company or with the St. Louis, Des Moines & Northern Railway Company?

A. I don't know anything about it only as we understood it.

Q. Just common rumor?

A. Yes. As foreman—I was one of their foreman employed for to do a certain class of work.

Q. You would not say these people whom profess to know about it who say the Narrow Gauge Railway Construction Company were the people who employed Raymond & Campbell, were wrong would you?

Objected to as calling for a conclusion of the witness and incompetent.

A. Why I would have no means of knowing anything about it.

Q. You do not know anything about it?

A. I don't know anything about that part of it.

Q. During the two weeks or month you worked prior to that time do you know whether you were paid by the Narrow Gauge Railway Construction Company or by the St. Louis, Des Moines & Northern?

A. I was paid by Mr. Litten out of F. C. Kinney's office the train dispatcher and my recollection would be, which I couldn't be positive just to say point blank that I was correct that it was by the St. Louis, Des Moines & Northern. I remember where it was and what I was doing, but what that bill head read I can't say.

Q. I did not ask you about that. I do not care anything about it except it is not material and makes a lot of record for us. Were you working under Mr. Kinney first?

A. Yes, sir.

Q. Did you know that Mr. Kinney at that time was working for the Narrow Gauge Railway Construction Company?

A. I did not.

Q. Now I have a voucher here which has been marked Exhibit "B" for the month of July, 1881 which shows apparently—or a duplicate voucher—that at that time Mr. W. O. Litten was a clerk for the Narrow Gauge Railway Construction Company, contractors, under the pay roll made out for Charles F. Loweth and others. Is that the Litten you refer to?

A. Yes, sir.

Q. He was the man you got your pay from? A. Yes, sir.

Q. Were you under him? A. Well not—

Q. Who was your immediate superior?

A. Jim Martin was the man I was under direct and we was all under Mr. Kinney, he was the head man.

Q. Now if it turned out that Mr. Kinney was working for the Narrow Gauge Railway Construction Company, who would you say you were working for?

Objected to as calling for a conclusion of the witness and argumentative and immaterial.

A. I should then have to say that I was working for Mr. Kinney and wherever he was employed.

Q. Now you said that the St. Louis, Des Moines & Northern was building this road. If it turned out that the contract with Raymond & Campbell was with the Narrow Gauge Railway Construction Company would you still think the St. Louis Des Moines & Northern was still building this railroad or would you say that the Narrow Gauge Railway Construction Company was building it?

Objected to as calling for an opinion and conclusion of the witness and being immaterial and incompetent.

A. Well I would have to acknowledge that I was working for the Narrow Gauge Construction Company. But at the same time I would say we was misled.

Q. Your understanding was, or you thought you were working for the Railway company?

A. Yes, sir; that was the understanding at the time that we was working for the St. Louis, Des Moines & Northern.

Q. Not that you were working for the St. Louis, Des Moines & Northern but Raymond & Campbell were building bridges for the St. Louis Des Moines & Northern?

A. Yes, that is it.

Q. You do not know anything about their contract or who it was with?

A. We are not supposed to know anything about the contractor's contract.

Q. That is what I thought when you were asked to tell who was doing it.

A. If I had a man working for me and he wanted to know about the contract I would get rid of him in a short while.

Q. Can you tell us just how far west the track was laid during the year 1881?

A. No, sir. Let's see, hold on. It was finished in 1882. It must have been laid to the High Bridge.

Q. And the bridge was incomplete and they stopped during the winter? A. Yes, sir.

Q. And went on next spring and finished the bridge and laid the track into Boone during the early summer? A. Yes, sir.

Q. Now your statements there was not any broad gauge track west of the river prior to 1882 was based on your inference was it not that they would not build the broad gauge track over here before that Des Moines river bridge was completed in Des Moines?

A. I think this third rail was laid here if you call that before that. My remembrance is that rail was laid some time before it was used.

Q. And do you remember also—

Judge Cook: Let him finish.

Mr. Guernsey: Haven't you finished?

A. Yes, sir.

Q. The broad gauge engines used the same round house as the narrow gauge engines did?

A. I don't know about that I couldn't say. I presume they did, but that was out of my line of business then, and at that time I was working for Raymond & Campbell and wasn't looking after the engines.

Q. You do not remember what, if any broad gauge track or third rail was laid to get them into the round house?

A. I don't remember whether there was any way to get down to the round house or not. I don't remember about that.

M. A. Hills.

Judge Cook: Complainant offers and introduces in evidence the direct examination of M. A. Hills from the aforesaid transcript, commencing at page 131 thereof and ending near the bottom of page 141 thereof, as follows:

"M. A. HILLS, called and sworn on the part of plaintiff and examined in chief by Mr. J. C. Cook, testified as follows:

Q. Where do you live at this time? A. 506 Clark street.

Q. Des Moines. What is your present occupation?

A. Taking life easy. I do a little bit of fire insurance.

Q. What is your age?

A. I will be 73 years old the 27th of April.

Q. Did you have anything to do with the building of the narrow gauge railroad from Des Moines to Boone?

A. Yes, sir.

Q. What was your—where were you living at that time?

A. I was living in Boone.

Q. What was your occupation in Boone at that time?

A. I had been a machinist.

Q. What was the first work that you did for the railroad company that built that Des Moines-Boone line. The narrow gauge?

A. I circulated a petition among the fre holders to get a tax for them up there for the building of the St. Louis, Des Moines & Northern Railroad.

Q. That was at Boone? A. At Boone.

Q. Who employed you to do that?

A. J. S. Clarkson and J. S. Runnells.

Q. Did they go to Boone to employ you? A. They did.

Q. After you had done that work and the tax had been voted were you employed to do anything for that company, the St. Louis, Des Moines & Northern Railway Company?

A. I received a telegram to come here and take a position in charge of the machinery department as master mechanic.

Q. Who did you receive that telegram from?

A. My impression is J. S. Clarkson.

Q. Do you know whether J. S. Clarkson at that time was the president of the St. Louis, Des Moines & Northern Railway Company? Or one of the principal officers?

A. I understood he was.

Q. What year was that in? A. 1881.

Q. And what time of the year 1881 was it that you came from Boone to Des Moines to engage in the service of that railroad company?

A. The last of May or first of June. The exact date I do not remember.

Q. What was the first work you did when you came here?

A. I was assigned to take charge of a gang of men straightening up an alley from the river front through the city here.

Q. Yes, sir. Yes, sir. Was that along an alley?

A. Yes, sir.

Q. And do you remember Heath's Oat Meal mill?

A. Yes, sir.

Q. Where was that situated?

A. On the corner of Fifth and the alley here.

Q. That is east of the present Union station? Union depot?

A. It is on this corner right over here.

Q. And east of the court house?

A. On the southeast side of the alley and east side of Fifth street.

Q. And east of the court house? A. Yes, sir.

Q. That is the county court house where we are now?

A. Yes, sir.

Q. Do you remember whether Mr Loudermilk helped you in that work of clearing away the alley?

A. Why yes sir; I remember that he worked with me and for me.

Q. Worked in your gang for a while? A. Yes, sir.

Q. Do you remember of his then leaving that work and going into the bridge building?

A. No, I don't know that I do that particularly.

Q. Now after that work was done of clearing the alley what next did you do?

A. I took a gang of laboring men and went to work and opened up the right of way all along down through here on down through away over to—well to where the Coon river bends around and the railroad runs east a mile and a half or two miles. Acted as section boss.

Q. That work of clearing began here at the oat meal mill as I understand you?

A. Yes, sir. Well east of the oat meal mill.

Q. And extended through the city as far as there was any buildings or lots abutting on the alley?

A. We tore the fences down and graded the ground and made fills where it needed it.

Q. On which side of the alley did you tear away fences?

A. My memory is on the—

Q. North side?

A. North side of the alley. I can give an instance if the court wants it.

Q. No, that will not be necessary. After you had cleared away the right of way—or the ground for laying the track,

did you also—or as that was going along did you also level the ground for the ties and iron?

A. Yes, sir; brought it down to a practical grade.

Q. Had grade stakes been set by the engineers at that time?

A. I think they had, yes, sir.

Q. And you went as far west as there was any building or buildings or lots abutting upon the alley?

A. We went beyond that.

Q. And how far west of the water works did you go in that work of clearing?

A. From a mile to a mile and a half before we got engines here or anything for me to do in the machine department.

Q. How far then west—then would you say that the right of way was cleared and grading done upon it as far as a mile and a half west of the water works when you quit that work and went into the machinery department?

A. Well I will say a good mile.

Q. What time of the year was it you went into the machinery department? A. That is pretty hard to answer.

Q. Yes, A. It is so long ago, but—

Q. Can you tell by the state of the weather?

A. I would say sometime in July or August. It is pretty hard to tell.

Q. When you went into the machinery department had there been any grading down out towards Clive beyond this place you say you worked?

A. The grading gang continued right along all the time.

Q. They were still farther out? A. Yes, sir.

Q. When did you notice that the work of track laying began in Des Moines for the narrow gauge? The Boone line?

A. It is a hard question to answer definitely when they did.

Q. But about what time of that summer of 1881?

A. Well during the summer some time and perhaps the latter part of July or August.

Q. Of 1881? A. Yes, sir.

Q. How near to the Des Moines River was that narrow gauge track laid during that summer of 1881 according to your recollection?

A. My recollection is about west Fifth street.

Q. About the first street on the west side of the Des Moines river? A. Yes, sir; running west.

Q. Did it extend from that point on through westward?

A. Right on through west.

Q. Was that a narrow gauge track laid there?

A. It was.

Q. About what time of that year do you think they—did they bring an engine here and cars to put on that narrow gauge track in the work of construction?

A. It is pretty hard for be to answer definitely, but some time during the summer, say during August or first of summer somewhere.

Q. When the work of track laying was going on with engines and cars at what point in the city of Des Moines did that work train start in going west?

A. Out about the old round house ground or 12th street or down about that section.

Q. And when did they begin to—or when did they commence coming down here to where the Union station now is to the old brick building?

A. They came to an old brick building. The passenger trains—or the trains run up as far as the old brick building located—to my memory—well it was anyway on the alley, an old church building.

Q. That was the one that was afterwards used as a passenger station until the Union station was built? A. Yes.

Q. And it was on the ground about where the Union depot now is? A. Yes, sir.

Q. What I would like to get at is if you can remember—

(Question withdrawn)

Q. Did you go with the work train after the engine came here? The machinery came here so you went into the machinery department?

A. No, sir. After the engine came here and the machinery department got established I stayed and took charge of the St. Louis Des Moines Northern engines and machinery department. Blacksmiths and everything of that kind.

Q. Did you go out on the construction trains occasionally to where they were laying the track?

A. Sometimes, yes, sir.

Q. How far had the track been laid on the Boone line when the work was stopped for the winter if you know?

A. My memory is at fault on that really, but it seems to me that it was—I couldn't answer that definitely. Some distance out.

Q. Beyond Clive you mean?

A. I would think so.

Q. Do you know what time of the year the road from Clive to—from here to Clive and on the Waukee was completed or was built so cars could run on it?

A. No, I do not on the Waukee branch? I wasn't connected with that I was on the St. Louis Des Moines and Northern, strictly.

Q. The Boone line? A. Yes, sir.

Q. When this narrow gauge track was laid down here to the oat meal mill on east of that, was there any standard gauge rails laid at that time?

A. No, sir; not until afterwards.

Q. Do you remember what time the bridge across the Des Moines river in the city here was built by the Des Moines and Albia line?

A. I don't remember the date.

Q. But about what time of year?

A. Really I couldn't answer intelligently just about what time it was. I know after it was built there was a third rail laid.

Q. To go out to the round house?

A. Yes, sir.

Q. Did the standard gauge engines go into that round house at all until 1882?

A. Well there was standard gauge engines on the track that they could enter over a switch the Rock Island put in, for hauling in ties and material about Eleventh street.

Q. I mean were there any of the Albia line engines?

A. No, sir.

Q. They did not come to the west side until the bridge was built I suppose?

A. No, sir. If they did they came over the Rock Island track to bring freight.

Q. Now when the Albia line was completed to Des Moines or the engines of that line—the standard engines from that line—the Wabash engines then coming and the use—

A. They put in a third rail and same over this line?

Q. How long had that round house been built and used by the St. Louis Des Moines & Northern Railway Company before the Wabash railway came there?

A. The first winter we had no round house. I had men and stayed with the engines all night and took care of them.

Q. That is the narrow gauge engines?

A. Yes, sir. We had but two as I remember right. An old mogul and what we called a dinky engine. And a gentleman who was watching for the Rock Island and two other young men took care of them that winter.

Q. The round house then was built after the first winter?

A. Yes, sir; that is my memory.

Q. About what time the next year 1882 was that round house built?

A. I couldn't answer definitely, I don't remember.

Q. Was it built some time before the Wabash came in from the east at all?

A. Really I don't know.

Q. Whereabouts was the place in the city here where the material was delivered by the Rock Island to the St. Louis, Des Moines & Northern Railroad Company or the contractors of that company. I mean the Rock Island?

A. Well I should state practically from Eleventh street east and west and on the south side of the track.

Q. South side of which track?

A. Narrow Gauge, St. Louis Des Moines & Northern.

Q. Was that the place the St. Louis, Des Moines & Northern or the contractors received the material for the building of the road and bridges?

A. I think it was, yes, sir.

Q. Do you remember which direction from Eleventh Street the narrow gauge track was first laid, whether it was laid eastward from there down to the oatmeal mill or whether it was laid westward first?

A. I think it was laid from the river on down west.

Q. That is from the Des Moines river westward?

A. Yes sir.

Q. Now do you know whether—or did you use stationary? Printed letter heads and printed heads for bills and reports?

A. No, sir. I acted also purchasing agent for them here.

Q. In the purchasing of what?

A. Materials for the shops and blacksmiths and buying everything necessary.

Q. You had charge of the mechanical and motive department?

A. Yes, and tie inspecting and trains and boarding houses on the line.

Q. How were the engines and cars of the narrow gauge road marked? What lettering?

A. St. Louis, Des Moines & Northern.

Q. And was that the marking of them when they came here to the city?

A. I think not. I think they were marked afterwards.

Q. Marked here? A. Yes, sir.

Q. Do you know whether they were second hand cars or new? A. They were.

Q. Second hand cars? A. Yes, sir.

Q. So the first engine and cars that narrow gauge company had were second hand cars?

A. Yes, sir.

Q. And they were painted and marked after they came here? A. Yes, sir.

Q. St. Louis, Des Moines & Northern Railway Company?

A. Yes, sir.

Q. And what railroad company operated the line of railroad then from the passenger station here at Fifth street westward to Clive and on north towards Boone?

Objected to as calling for a conclusion and not for facts.

A. St. Louis Des Moines & Northern.

Q. When did they begin operating it in the way of taking passengers or freight?

A. Sometime in the early 1882 and I forget just when, I couldn't recall.

Q. Did they do anything of that kind in 1881 as far as Clive?

A. I think not. Might have, but I think not.

Q. Did the St. Louis, Des Moines & Northern Railroad Company operate the road from in the vicinity of Fifth street in the City of Des Moines westward to Clive and on towards Boone before the Wabash bridge was built in Des Moines across the Des Moines river?

Same objection.

A. They operated so far as the construction was concerned.

Q. You say they began taking freight and passengers at least as early as 1881. Did they do that before the bridge across the Des Moines river in the city here was built?

Objected to because the witness did not say 1881. He said 1882.

Q. I mean 1882. Just change that.

A. I think not.

Q. They operated it for construction purposes then?

A. Yes, sir.

Q. And you had nothing to do with the freight or traffic department I suppose in any way of that company?

A. No, sir.

Q. So they might have taken freight and passengers even as far as Clive and Waukee even in 1881 and you not be aware of it?

A. I wouldn't have known it. Not necessarily.

Q. Can you tell me when the first—when the third rail was first laid you spoke of, the third rail having been laid on the narrow gauge track to the round house?

A. I couldn't give you the exact date.

Q. About what time of the year?

A. Well my memory would be some time in the next spring, 1882, somewhere along there.

Q. Was that done before or after the bridge in Des Moines here was built? A. I think so.

Q. You think it was laid before that?

A. Yes, sir.

Q. So you think it was laid some time before the Wabash engines used it?

A. Yes, sir. Preparatory for their use.

Q. Yes it was prepared for their use. I guess that is all.

Cross Examination.

Mr. Guernsey: The defendants offer in evidence the cross-examination of said witness from the said transcript, commencing near the bottom of page 141 and continuing to the bottom of page 150, and offer such exhibits, if any, as were identified in connection with said cross-examination.

"Q. I understood your name was Hillis? A. Hills.

Q. Now Mr. Hills why did you take the fence away from the north side of the alley and not from the south side?

A. Because the south side didn't need grading and the north side did and in fact I do not think there was any fence on the south side.

Q. Now you think they began this track laying down by the river? A. I do sir, yes, sir.

Q. They got the material up at Eleventh street?

A. The Rock Island delivered it.

Q. How did they get it down to the river, haul it down in wagons?

A. I could not enumerate that. They might have laid tracks there and shoved it up here.

Q. Is not that what they did?

A. I couldn't tell you. I think not. I think the track laying began up here and run on down.

Q. They took the material at Eleventh street and hauled it to the river and built the track to Eleventh street instead of beginning at Eleventh street and building east?

A. Yes, sir; my memory of it, yes sir.

Q. That would have been an inconvenient way to do it would it not?

A. Possibly they had to do things inconvenient then.

Q. Was there any reason you had to begin at the river instead of Eleventh street?

A. Had to begin somewhere.

Q. I didn't ask you that. I asked you whether there was any reason. You ventured the statement you had to do things in an inconvenient way at that time. I want to know whether there was any reason why you had to begin building that track down by the river and haul the material say eleven blocks instead of beginning it right where the material was?

A. I don't know just how to answer that question intelligently.

[QA.] I want an intelligent answer or none.

Q. Then you mean to say by that you do not know of any reason that required you to begin building this track in an inconvenient way? Is that right?

A. I mean to say to the best of my knowledge and belief they did do that.

Q. I did not ask you that, I asked you whether you knew of any reason that would require them to begin building this track in an inconvenient way? A. No, sir.

Q. Who had charge of that track building?

Q. You will have to ask a man with better memory than me, I can't tell you.

Q. Did you have charge of it? A. No, sir.

Q. Did you have anything to do with it? With laying the track? A. No, sir.

Q. Where were you working when they laid the track?

A. Down below 12th street in what would be the shops.

Q. It was after you got through with all your work as a section foreman as you call it they began to lay track?

A. It was after I got through with them. Yes, sir.

Q. Now who else besides Mr. Loudermilk was working with you in this gang?

A. Oh bless your heart I can't remember.

Q. You can remember him?

A. He is a neighbor and I saw him here. The truth is four-fifth of the men I never knew at the time and never knew them since. Some Americans, some Irish and some foreigners.

Q. I see you have the right distinction. You do not class the Irish as foreigners? A. Yes, I do.

Q. You said some were Irish and some were foreigners?

A. Well what I mean by that some were American born and some Irish and some foreigners. They were laboring men I picked up from day to day as I could get them.

Q. All of this work was being done by the St. Louis, Des Moines & Northern Railway Company?

A. I so understood it.

Q. I do not want your understanding. I want to know what you know.

A. Yes, sir. The material I purchased of Seeberger was charged to the St. Louis, Des Moines & Northern.

Q. You never hear of the Narrow Gauge Railway Construction Company did you?

A. Well, I might have, but I don't remember.

Q. It did not have anything to do with this work?

A. With the construction company?

Q. With what I am talking about?

A. I want to understand thoroughly.

Q. The Narrow Gauge Railway Construction Company had nothing to do with this work did it?

A. Not with the work that I done.

Q. I mean with building this line of railroad?

A. I don't know anything about it.

Q. You do not know whether the Narrow Gauge Railway Construction built or whether the railroad built it?

A. I understood the—

Q. I do not want what you understood, I want what you know.

A. I think I know the St. Louis, Des Moines & Northern built it.

Q. Then you know that the Narrow Gauge Railway Construction Company had nothing to do with it do you not?

A. No, I didn't say that at all.

Q. What did the Narrow Gauge Railway Construction Company have to do with it?

A. I don't know anything about that.

Q. You never heard of that company?

A. If I had I have forgotten.

Q. Yes. Now what relation did Mr. Clarkson sustain to that company? The Narrow Gauge Railway Construction Company?

A. I understood he was one of the men in charge of the building of the St. Louis, Des Moines & Northern Railway.

Q. That is not my question? What relation did he sustain to the Narrow Gauge Railway Construction Company?

A. I don't know anything about the construction company at all.

Q. Never heard of it?

A. I wouldn't say I didn't. I might have at the time.

Q. Now did Mr. Kinney have anything to do with this work you were engaged in? A. E. C. Kinney?

Q. Yes. A. I think he did.

Q. What did he have to do with it?

A. Well I couldn't tell you what position he held. Really I couldn't but he was apparently at the head of the department.

Q. You do not remember that very well.

Q. Who was there that was at work there besides Mr. Loudermilk during the time you worked here? That was in charge of things or did work?

A. There was Mr. Martin.

Q. Who else?

A. And I forgot the section man's name and others.

Q. Who were the people that were above the section men?

A. There was the train master his name was Litten, I believe.

Q. Who else was there?

A. I will never tell you for I forget them. Those in close connection with me I remember. The others I do not.

Q. Was that W. O. Litten?

A. I forgot his initials even, but he was trainmaster.

Q. How were these narrow gauge engines marked when they came to you?

A. My memory is they were marked from a road down at Cairo.

Q. What was the mark on them?

A. I couldn't tell you. I don't remember the line they were bought from Cairo, Illinois.

Q. When you acted as purchasing agent from where did you get your money?

A. The bills were paid from this headquarters up here. I don't know who paid them.

Q. That was Mr. Kinney's office?

A. I think he had an office there, yes, sir.

Q. And that was the office where Mr. Litten was?

A. The telegraph office was there. I had an operator also down at the round house.

Q. Where did you get your pay? From this same office?

A. Yes, sir. From the headquarters of the St. Louis, Des Moines & Northern.

Q. Yes, sir, that is—

A. That is my understanding.

Q. You have told us that several times. And that was true from the very first of it, was it not. When you were working on this section. The Narrow Gauge Railway Construction Company had nothing to do with it as far as you know? A. I don't know anything about it.

Q. What was the name of the road that built in from the east?

A. From the east? I don't believe I can refresh my memory and tell you what it was.

Q. What was the name of the road that run to Waukee?

A. That was called the Des Moines & Northwestern, if I remember right.

Q. And then there was this other road that run to Boone, you remember that?

A. The St. Louis, Des Moines & Northern.

Q. This narrow gauge track was laid in the alley here you say. What alley was that, the alley where the bridge across the Des Moines river in Des Moines was located?

A. It is the same alley that the road runs over now.

Q. So the bridge that was built—I am not talking about now. I am talking about then. So the bridge that was built then located at the end of this alley where this alley reached the river? A. Why I would think so.

Q. You do not know?

A. Oh thirty years is a good while.

Q. I know but you remember where this track was and when this bridge was finished and all that, now do you not remember where the bridge was?

A. There was no bridge there when the track was laid.

Q. Do you not remember where the bridge was?

A. Where it was?

Q. Where it was?

A. There was no bridge there when the track was laid.

Q. Was there a bridge ever built there? A. Yes, sir.

Q. Where was it built?

A. Right east of where the track was laid.

Q. That is what I asked you.

A. I didn't understand it that way.

Q. As soon as this bridge was built this narrow gauge track was extended on east as I understood you?

Objected to as assuming something the witness has not stated.

A. Well I didn't say it was.

Q. Well was it ever extended on east across this bridge?

A. It might have been in the yard, but I don't think there was a general track laid.

Q. I do not know what you mean by that, but what I want to know is whether this narrow gauge track was ever extended east across this bridge that you have referred to?

A. I would say no.

Q. Never was? Were narrow gauge cars ever operated east across that bridge and narrow gauge engines?

A. Can I qualify that a little bit and tell them how far it might have been used?

Q. Tell what you know.

A. I say my impression is after thirty years they had a yard and run cars over into the yard. What we call the railroad yard.

Judge Cook: That is on the east side of the river?

A. Yes.

Mr. Guernsey: Then your impression is they did have a narrow gauge track across the bridge?

A. They might have had. I wouldn't swear they did have, but they might have had. It is a long time to remember, thirty years.

Q. I agree with you on that. A. Yes, sir.

Q. Now then what trains was it that they—that started at this station on Fifth street here? A. On Fifth street?

Q. Yes. A. The St. Louis, Des Moines & Northern.

Q. I know, but did all of the work trains start there?

A. At the time I speak of they did.

Q. Where did they get their material to load them with?

A. The rails and ties?

Q. Yes.

A. They were delivered in the yard below here by the Rock Island.

Q. They started the trains here did they at the station?

A. Naturally they would get their orders here and pull down and load up and go on out.

Q. I am not asking about naturally, I am asking you what they did?

A. They got their orders here and stopped down to the pile of ties or rails or whatever they wanted and loaded and went on out, but they had to come to the depot to get orders of Mr. Litten.

Q. So what you mean is they went to the station to get their orders and then went out? A. That is it.

Q. These trains got these orders from the same Mr. Litten we have been talking about? A. I think so.

Q. And all of the trains you have been talking about got their orders from him?

A. I don't know about that. All the trains on the St. Louis, Des Moines, & Northern so far as I know did.

Q. When did you leave the company?

A. I forget whether it was 1887 or 1888, but I will say 1887.

Q. While you were with the company how far west did the narrow gauge track go?

A. You mean the St. Louis, Des Moines & Northern?

Q. No, I mean the broad gauge track. While you were with the company how far west was the third rail laid?

A. I couldn't tell you.

Q. Have you no recollection of it at all?

A. Something I never thought of.

Q. Can you tell us how far west it was laid in 1882?

A. The standard gauge?

Q. Yes. A. No, sir.

Q. Or how far west it was laid in 1881?

A. No, sir; I won't try to answer it.

Q. Or how far west it was laid in 1883?

A. I don't remember when they changed from narrow gauge to a standard gauge.

Q. The whole thing had become broad gauge before you left there, had it not?

A. I couldn't answer it. I don't remember anything about the gauge part of it.

Witness excused."

C. W. Gooch.

Judge Cook: Complainants offer and introduce from said transcript the testimony in chief of C. W. Gooch, beginning on page 151 thereof, and ending on page 158 thereof, as follows:

"C. W. GOOCH, called and sworn on the part of plaintiff and examined in chief by Mr. J. C. Cook, testified as follows:

Q. Where do you live? A. 1325 West Ninth street.

Q. In the City of Des Moines? A. City of Des Moines.

Q. How long have you lived here in the city?

A. Since I first came here?

Q. Yes. A. Since July, 1878.

Q. Did you ever work for the St. Louis, Des Moines & Northern Railroad Company? A. Yes, sir.

Q. On the building of this narrow gauge road between Des Moines and Boone? A. Yes, sir.

Q. Do you know whether in your employment you worked for the railroad company direct or for a construction company that was building the road for the railroad company?

A. Well the department I was under was under the engineering department.

Q. Who was the head of the engineering department?

A. E. C. Kinney.

Q. In what year did you begin working on that narrow gauge road? A. In September, 1881.

Q. Now, at that time were you living in Des Moines?

A. Yes, sir.

Q. At that time had the narrow gauge track here been laid here in the city? A. Here in the city?

Q. Yes. A. Yes, sir; at September it was.

Q. When you began to work then to what point here in the city had the narrow gauge road been built and track laid?

A. At what point?

Q. Yes, here in the city.

A. Well I couldn't state positively other than we took a train down out of—out about the water works. Fourteenth street.

Q. Where did you live then with reference to the water works?

A. I boarded at 12th street just along the Rock Island track.

Q. Twelfth street on this side? A. Yes, sir.

Q. Whereabouts was the place where the material, the construction material, ties, iron and bridge material was piled up at this end of the line? A. At what point?

Q. Yes. A. It was about from 12th to 16th street.

Q. In through there?

A. Somewhere in the locality, I wouldn't state exactly the location.

Q. Did the trains come down here to the old depot building that was afterwards used as a depot?

A. At that time?

Q. Yes. A. No.

Q. You got on then there about where the material was piled? A. Yes, sir.

Q. Was the track laid for some distance east of that at that time? A. East of where?

Q. East of Eleventh street this way?

A. If there was any track it was track that was used for storage purposes for cars and material, etc.

Q. The track did extend this way from Eleventh street as I understand it?

Objected to as leading.

A. I couldn't state.

Q. You lived out there and your work was beyond that?

A. The other side; yes.

Q. What work did you do?

A. I was employed in the bridge and building department.

Q. When you began work how far west of the city or north of the city had the tracks been laid?

A. About three miles north of Clive. Somewhere about that.

Q. And at what place did you first work on the bridge?

A. At the water works, help place a guard rail on there.

Q. That is a little bridge that is there at the water works here in the city?

A. Yes, sir.

Q. About how far west of Farnham street here in this city was that little bridge, if you remember?

A. About—somewhere about 200 feet more or less. I wouldn't state the distance.

Mr. Guernsey: Does not the plat show where it is?

Mr. Cook: Yes. Well it is the little bridge or culvert that is right close to the water works that you helped to build?

A. Just west of the old building.

Q. How is it with reference to the present water works building? A. Well I haven't been there.

Q. Step down here and look at this map.

A. There has been some improvements made there as to what they are I don't know.

Q. Will you look at the plat here, "Exhibit 41" and point out—there is the city water works beyond. Now point to the little bridge. This is east, here is Farnham street. Point on this map where that bridge is located?

A. Somewhere in here. The stream, runs down around this way past the building.

Q. Is that the culvert through which the waste water from the water works—the pumping station runs?

A. I couldn't say, I haven't been on the ground since the culvert was placed in there.

Mr. Guernsey: For your benefit I will tell you my information is there is no water from the pumping station. That witness that talked about that made a mistake.

Judge Cook: You mean the little bridge at the city water works?

A. Yes, sir.

Q. Des Moines City water works?

A. Yes.

Q. Did you help to put in that tile bridge?

A. No, sir.

Q. What did you help do on it?

A. Helped put the guard rail on and ties.

Q. So that the tiling had been driven and stringers laid before you began work? A. Yes, sir.

Q. Was that the first work you began at?

A. Yes, sir.

Q. That was when? In the year 1881, what time?

A. In September.

Q. Do you remember what week in September you began to work for them? A. No, sir.

Q. Sometime in the month of September?

A. Somewhere from the 5th to the 7th.

Q. At the time you began working on that bridge could the cars cross over it? Was the rail laid?

A. Yes, sir.

Q. And you helped simply to finish the bridge?

A. Yes, sir.

Q. Who were you working for?

A. J. A. Martin.

Q. That was that foreman?

A. He was superintendent of the work.

Q. And were you working for the railroad company or for the construction company or for the bridge company, Raymond & Campbell?

A. I was working for the railroad company, I was not working for Raymond & Campbell.

Q. Who paid you?

A. Who paid? As I remember we drew out checks down here at the Polk & Hubbell building on Fifth street. I do not remember who they were signed by.

Q. Were the officers of the railroad company and people engaged in the construction of the road at that time in the Polk & Hubbell building here in the city, the officers?

A. No, they were up stairs in the building where the present railway station is.

Q. Was that in a brick building? A. Yes, sir.

Q. Down here by Fifth street? A. Yes, sir.

Q. Did you go to that office occasionally?

A. Sometimes, not often.

Q. I will ask you whether at that time the track—the narrow gauge track was not laid clear down past that office and to the Heath Oat Meal Mill?

Objected to as leading.

A. I don't think it was.

(Question withdrawn)

Q. How long in the year 1881 did you work for the railroad company? The St. Louis Des Moines & Northern?

A. I don't just remember the exact time. I was with the system for a number of years.

Q. You continued then? A. Yes, sir.

Q. Did you help complete the bridge across the Des Moines river? High Bridge?

A. High Bridge?

Q. Yes, sir. A. Yes, sir.

Q. That is a little ways this side of Madrid?

A. Yes, sir.

Q. When was that completed so that cars could run over it?

A. That was in the spring of the following year after I started in here.

Q. That would be in the spring of 1882?

A. Yes, sir.

Q. When did you quit work for that winter? The winter of 1881 and 1882? A. Where?

Q. When? About what time of the winter of 1881 and 1882 did you quit work for the winter?

A. I wouldn't state positive but I think it was in December some time.

Q. At that time how far—how near to the Des Moines river at High Bridge was the Boone line track laid? The narrow gauge?

A. About the time I quit? I couldn't say.

Q. Did you go out and—go out and come in over the train? Work train? A. Yes, sir.

Q. Think a moment and see how far did you have to walk from the end of the track to the bridge or did you go to the bridge? A. Where at, High Bridge?

Q. High Bridge. Or had you begun working on the high bridge?

A. I begin working on the high bridge I think it was in March.

Q. The track was laid to the station there they called Kelsey?

Q. About how far was that from the Des Moines River at High Bridge? A. Kelsey?

Q. Yes.

A. About two miles or a mile and three quarters.

Q. Did you work at the Des Moines river at any time before the spring of 1882? A. No, sir.

Q. Was that before you—during 1882 you worked this side of the Des Moines river? A. Yes, sir.

Q. How far from Clive was the last work you did the fall or winter of 1881 before you began work the next spring?

A. I couldn't state.

Q. But you do remember helping to build this little bridge here by the water works? A. Yes, sir.

Q. And that was the first work you did? A. Yes, sir.

Q. At the time you worked on that bridge was there anything more there than the two rails of the narrow gauge track?

A. That was all.

Q. Was there any third rail laid across that bridge at that time? A. Not at that time.

Cross-Examination.

Mr. Guernsey: The defendants offer in evidence the cross-examination of said Gough, commencing on page 158 of said transcript and ending at the bottom of said page, as follows:

“Q. Did you ever hear of the Narrow Gauge Railway Construction Company?

A. Of what Narrow Gauge?

Q. Of any Narrow Gauge Railway Construction Company?

A. I have heard of a number of them different times.

Q. Did you ever hear of one in connection with the building of this road you have been talking about?

A. St. Louis, Des Moines & Northern?

Q. Yes.

A. There was another one built about that time, yes.

Q. Did you ever hear of a Narrow Gauge Railway Construction Company that was concerned with the building of the St. Louis, Des Moines and Northern Railway?

A. No, sir; I don't remember of any construction company.

Q. Then so far as you know there was no construction company that had anything to do with the building of that road?

A. Not that I know of.

Q. You were working under Mr. Kinney?

A. He was the head. The man who I worked under. Reported to and received orders from Mr. Kinney.

Witness excused."

E. W. Raymond.

Judge Cook: Complainants offer and introduce from said transcript the examination in chief of E. W. Raymond, beginning on page 159 thereof and ending near the bottom of page 165, as follows:

"E. W. RAYMOND, called and sworn on the part of the plaintiff and examined in chief by Mr. C. E. Vroman, testified as follows:

Q. What is your residence?

A. At present at Toronto, Canada.

Q. What is your occupation?

A. I am connected with the manufacture of an ointment. I attend to the manufacturing of that up at Toronto.

Q. You have been in the court room during this trial. A portion of it, have you?

A. Yes, sir; part of it.

Q. You have heard the witnesses testifying about the construction of the road, the St. Louis, Des Moines & Northern?

A. Yes, sir.

Q. Were you connected with the construction in any way at the time it was progressing?

A. I was one of the contractors. Raymond, of the firm of Raymond & Campbell.

Q. What contract did you have?

A. We had the contract for the construction of the bridges between Des Moines and Boone, including—Des Moines and Boone.

Q. Do you know who the contract was with?

A. No, I do not. That is so far as positive memory is concerned. But I have always and never had any other impression than it was the St. Louis, Des Moines & Northern Company.

Q. When did you come here? A. To do the work?

Q. Yes.

A. I remember of coming over here to Sheldahl with Mr. Kinney.

Q. What time was that?

A. It was about the time on the date I think that the cyclone that destroyed Grinnell.

Q. Can you give us any idea of the time?

A. I think it was in June.

Q. What were you doing there? Working or inspecting?

A. Went up to view the High Bridge I think, to start the work.

Q. Had the work been started at that time?

A. I think not. Not our work.

Q. Do you know what work was being done here in the city at that time?

A. I suppose not because I naturally wouldn't, not having been here.

Q. When you came here did you see what was going on here at that time?

A. I do not remember that. I do not remember what was done here.

Q. You say you had a contract to construct bridges. Did that include culverts, small bridges and large bridges?

Objected to as not the best evidence.

Mr. Guernsey: The contract was in writing was it not?

A. Yes, sir.

Mr. Vroman: You may say then whether or not you built culverts and bridges as part of your work on the line?

A. Yes, trestle bridges and we may have built all the culverts. I do not remember about that. The culverts are not the same as the pile bridge.

Q. Did you build all the pile bridges? A. Yes, sir.

Q. Do you remember a bridge at the water works which had been spoken of in the testimony?

A. I do not remember that definitely. I do have an impression, that I saw our pile driver standing up right at that site. That is my impression to drive the piles for that bridge.

Q. Were you here constantly during the time this work was going on? A. I was here a portion of every week.

Q. Where were you living at that time?

A. Council Bluffs, Iowa.

Q. So you were not on the line all the time?

A. No, sir. There may have been times that I did not come out here at all, but went to Sheldahl and over the Northwestern and out to High Bridge.

Q. This little bridge you spoke of at the water works, was that a culvert or pile bridge?

A. As I told you, my impression is I can see our pile driver now standing up there driving those piles. That is all I can say about that.

Q. When was that? A. That I cannot tell you.

Q. How long after you took this ride with Mr. Kinney would you say it was?

A. I couldn't tell you that. I couldn't give you the date of the construction of that bridge.

Q. Could you give the season of the year, or the month?

A. It would be indefinite whatever I might tell you about that.

Q. Can you say whether it was in the year 1881 or not?

A. I think it was. As I say I am very positive it was.

Q. Do you remember whether or not it was cold or warm weather at the time?

A. I think it was along in the spring time.

Q. Who was working on that bridge? Who had the supervision of the construction?

A. A man named Milo Adams, was foreman of the pile driver and this man Loudermilk was one of the workmen. He says he worked on the bridge, of course I do not remember about his working on the bridge but he was one of the workmen.

Q. You remember him. A. Yes, sir.

Q. What other workmen did you have that you now remember that had some supervision? I don't mean the ordinary laborers?

A. A man named George Wise, who came soon after that bridge was built and kind of looked after the work between here and High Bridge, and some beyond it, but he was not here when the piles were driven, but he tells me he remembers—

Q. Never mind. You cannot testify to what he said. Who else if you remember?

A. Well there was a man named Rick who was here and spent his time in Des Moines most of the time looking after the construction of the work, framing, etc., out on the line. J. W. Rick.

Q. Do you remember a man named James Sagin?

A. Yes, he was our Superintendent on High Bridge.

Q. When did you commence the construction High Bridge?

A. I went out with Mr. Kinney to Sheldahl and went to High Bridge and looked it over and the material had been ordered—if I recollect right the company had started in to do the work before they contracted with us and some material was ordered and we took some of that same material and it was soon after we took the work we commenced hauling from Sheldahl.

Q. Do you know when that was?

A. It was after June. After I came out with Mr. Kinney. I do not remember what time.

Q. Can you give us approximately the time? A. I cannot.

Q. Can you give us the month?

A. I cannot do that, no, sir; because I remember we had—remember we had the trestle all built—the approach to the

bridge before winter. We built the bridge mostly—High Bridge in the winter time.

Q. Was there any railroad line to the bridge at that time? Had the road been constructed to the bridge when you commenced building it?

A. No there was no track out—I do not remember about the track out here, I think the track was laid before we commenced to work here over some ties laid down at the opening.

Q. What do you mean by that?

A. Right here in town. Near the town the track was on openings with ties cribbed up instead of a bridge. I do not know what the extent of that was.

Q. Was that the condition before you commenced the construction of High Bridge?

A. I do not know whether that was before or afterwards.

Q. Or whether it was done while you were constructing High Bridge?

A. It might have been done while we were organizing our crew to go to work at it. It takes a little time to get the plant together to do the work.

Q. You did not get the material for the High Bridge from this line of road that was being constructed?

A. Not all of it.

Q. Did you part of it? A. I think we did.

Q. That must have been when you were finishing the bridge?

A. Yes, sir. If I recollect right the track was laid up to the bridge, during the winter so that the iron and timber for the spans were conveyed over the track: It was laid from here to High Bridge.

Q. Do you remember when that high bridge was finished?

A. No. It was finished in the spring of 1882, but I do not remember just what time.

Q. When did you finish your contract with the company?

A. That is another period I cannot fix in my mind positively.

Q. Approximately. A. Well along in the summer of 1882.

Q. Were you up and over the line more or less?

A. I used to leave Council Bluffs ever Sunday night or Monday morning and come out here and remain during the week. A greater portion.

Q. What I mean is whether you were over the line of this new road when it was built up and across the bridge. High Bridge you speak of?

A. Yes, I was back and forth. Of course with me in looking after work of that kind I saw a crew here a minute and go on to another crew.

Q. In going over the line of the new road how far down in Des Moines did you come?

A. Well after they commenced running trains out of here we came into this depot here or I believe about Seventh street is it not, somewhere along there.

Mr. Guernsey: Fifth Street.

A. Yes, Fifth street. Yes the track was laid in there or just this side of there. Not quite to Fourth Street if I remember right.

Mr. Vroman: You used to ride on that line before you had finished your work entirely?

A. Yes, as soon as the track was laid to High Bridge I used to ride up that way. I used to keep a team at Sheldahl to go from there over before that line was constructed.

Q. And after the line was built up to the bridge you used the new line to go over? A. Yes.

Q. Where would you take the car to go? Fifth street here?

A. Yes, Fifth street.

Q. Do you know anything about the Des Moines St. Louis Railway Company—railroad company?

A. I think not more than there was such a line being built into Des Moines.

Q. Did you see anything of its construction?

A. Well, I don't remember.

Q. Do you remember if this was built into Des Moines during 1881, the time you were working on the High Bridge?

A. I do not remember about that. My recollection is though when I was out this way, of course I was rambling around quite a little I remember seeing work done between here and Albia when I was doing this work here.

Q. That work on that road was going which way, toward Albia or toward Des Moines? A. I don't know.

Cross-Examination.

Mr. Guernsey: The defendants offer in evidence the cross-examination of said witness Raymond, commencing near the bottom of page 165 of said transcript and ending on page 167 thereof, as follows:

“Q. Who was your man that was in charge of this work, Mr. Raymond?

A. I was in charge of it myself. That is general supervision.

Q. You had somebody on the job?

A. A man named Sagin who looked after the High Bridge work and had a man named Rick who looked after the other

work down here. Mr. Sagin and Rick—Mr. Rick was here in Des Moines while Sagin lived at High Bridge.

Q. You came down once a week and looked the thing over?

A. I came down Monday morning and usually stayed until Saturday night, but often I had to stay over there because I looked after our whole business. We had work going on elsewhere and I was business manager of the concern and there was some days I had to remain there but usually I came out here every week and spent all I could get part of the week here.

Q. And at this time was General Dodge living in Council Bluffs? A. No, sir; he was living in New York, I suppose.

Q. Were you acquainted with him at this time?

A. I was slightly acquainted with General Dodge. He knew of me. His brother was a personal friend of mine and I knew General Dodge was interested in this, but not in detail at all.

Q. And was it through him that you got this contract?

A. I don't know. I don't know whether he had any influence in the matter or not.

Q. Who did you negotiate with to get this contract?

A. Well that I am not positive about as to who it was. I know our—the contract was drawn up with Mr. Hubbell I think. Mr. Kinney might have done it.

Q. I was going to ask you whether Mr. Kinney was connected with these negotiations or not?

A. I do not remember.

Q. Is not this the way it happened? See if this refreshes your recollection any. Did not Mr. Kinney go over the matter with you and make a tentative agreement and arrange the details and was it not closed with Mr. Hubbell?

A. I do not remember that. I do not remember in whose presence I signed the contract but I know we were paid by Mr. Hubbell.

Q. You cannot say positively whether that contract was with the railroad company or whether a construction company was building the railroad?

A. No, I cannot say positive, but I do know I didn't know of anything else but the St. Louis, Des Moines & Northern.

Q. You say you never knew of anything else?

A. Yes. I say now I do not recollect. It may have been—I might have signed the contract with the Narrow Gauge Construction Company, but I do not remember anything of that kind."

Redirect Examination.

Mr. Cook: The Complainants now offer and read in evidence the redirect examination of said witness Raymond, beginning on page 167 and ending on page 167, as follows:

"Q. What you remember is the St. Louis, Des Moines & Northern? A. Yes.

Q. You have spoken of Mr. Rick? Where is Mr. Rick?

A. Mr. Rick was at Kansas City. He was a bridge constructor.

Q. Have you heard later where he had gone?

A. No. Somebody told me he was going to Honduras and that he could not get—could not be had here now.

Q. Mr. Adams you spoke of?

A. Mr. Wise can tell about Mr. Adams. You will see him this afternoon.

Witness Excused".

G. C. Wise.

Mr. Cook: The Complainants now offer and introduce in evidence from said transcript the testimony in chief of G. C. Wise, commencing at page 180 and ending on page 183, as follows:

"G. C. WISE, called and sworn on the part of the plaintiff and examined in chief by Mr. C. E. Vroman, testified as follows:

Q. What is your residence? A. Council Bluffs.

Q. Iowa. Were you in Des Moines in the year 1881 during the time of the construction of the line of the St. Louis, Des Moines & Northern Railway Company?

A. A portion of the time.

Q. When did you arrive here?

A. About the first of September, or early part of September.

Q. Were you connected with that construction work in any way? A. Yes, sir.

Q. In what way?

A. I was superintending the bridge work—the line bridge work.

Q. Under whom? A. Raymond & Campbell.

Q. Raymond & Campbell I understand were the contractors doing the work? A. Yes, sir.

Q. What was the condition of the line when you came here and first saw it?

A. The line was built—the bridges were built about to the junction or Clive I believe it is called, and operated about that far. I took charge of the bridge work at the Junction or very close to there. From that north on the Boone line.

Q. How far into the city did that construction extend? Rail construction?

A. It came to the street that runs in front of this court house.

Q. Fifth Street? A. Yes.

Q. Do you remember whether it extended further east or not?

A. There was a track laid I think that swung around the elevator or mill of some kind. A large building that stood there. The track turned around that but I never noticed particularly how far it went. It was a kind of a temporary track laid around there.

Q. Was it all narrow gauge construction? A. Yes, sir.

Q. When you came here did you see any broad gauge construction on that line? A. No, sir.

Q. Where was the depot or station?

A. Right here practically on Fifth street or I presume between Fifth and Sixth.

Q. When you went out to Clive and on about your work where did you take the train to go out?

A. Sometimes right here and sometimes up at the yard this side of the water station.

Q. Where is that?

A. A few blocks west of here.

Q. Do you remember the street?

A. I don't remember the name of the street.

Q. Would you remember if I suggested it? Eleventh or Twelfth street?

A. That is probably near where it is. It was five or, six blocks from here.

Q. Do you remember a small bridge near the water works?

A. Yes, sir.

Q. What was the character of that construction when you came here?

A. It was a pile bridge.

Q. You may state whether or not that bridge was within your jurisdiction?

A. It was built when I came here.

Q. Had you any occasion to examine that bridge as part of the work of Raymond & Campbell?

A. Not particularly, no, sir; more than notice it in going over it back and forth.

Q. Did you have any occasion to check up the material?

A. Not particularly in that bridge. I had a list of all bridges on the line in a little book I carried in my pocket that I would bill out from such as we needed, and the bills for every bridge were in that book.

Q. Was that little bridge at the water works in that list of bridges?

A. It is my recollection that it is.

Q. How long did you remain here?

A. Until it froze up when we quit work for the winter I think just about the holidays. I remained in the city here—I stopped in the city at night until sometime in December when I moved from here to Madrid. After I crossed the river and was doing work on the other side of the river I moved to Madrid and stayed there.

Q. When was that?

A. Sometime in the month of December.

Q. How far had the line been constructed toward Waukee or Boone when you quit?

A. The track was laid on the Boone line to the High Bridge. We had the bridges built though on the other side up to Madrid almost. Perhaps there was one or two bridges this side of Madrid to put in yet.

Q. How far was the line built towards Waukee?

A. I never was out over that line.

Q. Do you know whether the railroad bridge across the Des Moines river in the city over which the Des Moines & St. Louis road came in was constructed or built when you were here?

A. It was not built then yet, no, sir.

Q. Not yet built? A. No, sir.

Q. Was it built when you left the work?

A. I don't think so. It might have been a portion of the foundation in possibly but the bridge was not completed.

Q. Do you remember or were you here when they put in the third rail for broad gauge or standard gauge construction?

A. I don't remember it.

Q. You do not remember while you were here of seeing a broad gauge or standard gauge construction upon the ties of the St. Louis, Des Moines & Northern line?

A. No, sir; I am not sure there was one, not while I was here in the city."

Cross-Examination.

Mr. Guernsey: The defendants offer in evidence the cross-examination of said above witness, commencing at page 183, and including page 184, as follows:

"Q. You were employed by Raymond & Campbell?

A. Yes, sir.

Q. And they were the only people by whom you were employed on this work? A. Yes, sir.

Q. You have not any definite recollection of track east of the old station aside from this temporary track about the oat meal mill there? A. That is all.

Q. You had nothing to do with this pile bridge near the water works yourself?

A. No, sir; I had nothing to do with the building of it.

Q. How long did you stay at Madrid?

A. I think about three weeks.

Q. And then you left permanently?

A. I left for good and went home.

Q. You went up there in December, 1881? A. Yes, sir.

Q. Do you know when the bridge across the Des Moines river in Des Moines here was built or completed?

A. No, I do not.

Witness excused."

James Saguin.

Mr. Cook: The Complainants now offer and introduce in evidence from said transcript the testimony in chief of James Saguin, commencing at page 185 and ending near the top of page 188, as follows:

"JAMES SAGUIN called and sworn on the part of the plaintiff and examined in chief by Mr. C. E. Vroman, testified as follows:

Q. Where do you live?

A. Council Bluffs, Iowa.

Q. What is your business?

A. Railroad bridge contractor.

Q. Were you in the city of Des Moines in 1881 while the line—railway line of the St. Louis, Des Moines & Northern was under construction? A. Yes, sir.

Q. What time did you come?

A. Along the forepart of August, 1881. Some time in August, I don't know the exact date.

Q. What connection did you have with the building of that line?

A. I came here from St. Louis to take charge of the building the Des Moines river bridge above Polk City.

Q. Is that the bridge known here as the High Bridge?

A. Yes, sir.

Q. Did you note the conditions of the line in the city of Des Moines when you came here?

A. I was down there with the men that had charge of the work several times and rode out with them along the line five or six miles.

Q. At that time how far up into the city was the line?

A. Well I couldn't say. I know it run this side of the water works four or five blocks and there was a narrow gauge track laid in there and broad gauge track right beside of it. The narrow gauge track was laid in kind of a depression and they rolled the timbers down there and loaded it.

Q. Where was that broad gauge? Down by Eleventh street?

A. I do not remember the streets it was this side of the water works.

Q. Was that where the material was unloaded from the trains? A. Yes.

Q. Do you know whether that broad gauge track was the Rock Island line?

A. I do not remember. I think the material came in on the Rock Island road.

Q. Was it a switch track or side track?

A. It was a side track where they would run five or six cars.

Q. Broad gauge cars?

A. Yes, with iron and stuff and unload it.

Q. Did you see any broad gauge construction anywhere else along the line of the narrow gauge construction?

A. Not when I was there. There was other tracks further out towards the river I think.

Q. Was there any third rail put on if you remember in the narrow gauge right of way?

A. I do not remember that no.

Q. When you came into the city and went out where did you leave or take the train?

A. I took the train on Northwestern and went to Polk City.

Q. You did not use the narrow gauge line?

A. No the track was only laid about four or five miles if I remember right when I came here.

Q. How long did you remain here?

A. From the latter part of August till the next April till the High Bridge was done. Finished complete.

Q. Worked on the High Bridge during the winter?

A. Yes, when it was not too cold so we could work.

Q. Do you remember whether the narrow gauge construction had reached the bridge before it was built? Constructed? Completed? A. Yes.

Q. Do you remember when they got there?

A. I think about the holidays. I know they brought up the spans and iron from the spans across the river on the narrow gauge road. The intention first was to ship the stuff up on the Northwestern to Polk City and haul them up and that material came in slow and they got the track up there and shipped the material from here up on the bluffs to High Bridge.

Q. Did you, when you were here, observe whether a railway bridge had been constructed across the Des Moines river in Des Moines?

A. No they had started one I think about that time. The Wabash bridge if I recollect right.

Q. What do you mean by that time?

A. In the fall of 1881 or 1882. I know they were talking about building a bridge here.

Q. For what line?

A. I think they called it the Wabash bridge.

Q. Did you hear anything about the Des Moines & St. Louis Company from Albia?

A. Yes, there was such a line talked of.

Q. Was that the line the bridge was to be constructed for if you remember?

A. I can't say. I know there was a bridge to be built here but I can't remember whether it was the Wabash.

Q. That bridge was not built when you came here?

A. No. They were talking about starting it and a fellow wanted me to apply there for a job. I said no I did not care for it.

Q. When did you complete High Bridge?

A. I think April 1882, and I was there till they laid the track over the bridge and got to laying track towards Madrid."

Cross-Examination.

Mr. Guernsey: The defendants offer in evidence the cross-examination of said witness, which is set out on page 188 of said transcript, as follows:

"Q. You say you remained here from August until April. Do you mean in the City of Des Moines?

A. No up to High Bridge. I was only here about a week and then I went up there and I wasn't back until after they got the track laid and I rode down from the bridge to Des Moines on the Narrow Gauge.

Q. That is what I thought. Your work was on that bridge up there entirely?

A. Yes, sir.

Q. You did not have any work here in Des Moines?

A. No, I was around here a week and the foreman that had charge of the work he and I used to work together and he had a team and was hauling timber out on the line and I went out with him three or four times.

Q. You had not any special interest in the things here?

A. No, I had not.

Q. You spoke about the fact they were talking about starting this Wabash bridge and somebody suggested you apply for a job. That was when you came here in August, 1881?

A. No, it was the next spring. I had got through at High Bridge.

Q. You think then that bridge had not been started in April, 1882?

A. I do not think it had. They were about to start it, I think. I know there was some talk about the bridge.

Witness Excused".

Ed Mellin.

Mr. Cook: Complainants offer and introduce in evidence from said transcript the testimony in chief of Ed Mellin, beginning on page 189, and ending on page 192 of said transcript, as follows:

"ED MELLIN called and sworn on the part of the plaintiff and examined in chief by Mr. C. E. Vroman, testified as follows:

Q. Where do you reside?

A. Des Moines, Iowa.

Q. I infer from your uniform that you are on the police force in the city of Des Moines? A. Yes, sir.

Q. How long have you lived in Des Moines?

A. I have been here the majority of my time since 1869.

Q. You were here then in 1881? A. Yes, sir.

Q. And you were here when the line of the St. Louis, Des Moines & Northern was commenced and built? A. Yes, sir.

Q. Were you connected in any way with the construction of that line? A. I worked awhile on the bridges.

Q. When did you begin?

A. As near as I can recollect along about the second week in July of 1881.

Q. What bridge did you work on first?

A. It seems to me the first bridge I done any work on was to help deck a little bridge at the water works.

Q. What do you mean by decking?

A. Putting on the ties and lining it up and putting on the guard rail.

Q. What kind of bridge was it when you did that work on it?

A. My best recollection it was either two or three spans.

Q. A pile bridge? A. Yes, sir.

Q. Do you know what kind of bridge had been there prior to the putting in of the pile bridge? A. Only from hearsay.

Q. Had you observed the commencement and construction of this road before you went to work for it?

A. Well some yes sir. I had been over there looking around like a great many other visitors as a narrow gauge road was something the people looked at here a little bit. Went over maybe Sundays and looked around a little bit.

Q. It was a curiosity at the time?

A. I had been over there once or twice before I went to work to get a position there.

Q. In June or July what was the condition as to its construction? What had been done as far as you then observed and now remember?

A. My recollection is the rails were laid at that time down about as far as West Fifth street and then I couldn't say how far west for I did not go out over the line for possibly about possibly two months.

Q. As far west as you went?

A. I didn't go out over the line for possibly two months any farther than the water works. I think that was my first work. I was working here in the yard on framing ties. We framed a whole lot of them and shipped them out and went out and decked bridges out on the line.

Q. When you went out two months later where was the—to what point had the line reached if you remember?

A. It went out as far as Clive.

Q. All narrow gauge construction? A. Yes.

Q. Was there any other line on that same right of way at that time? A. No, sir.

Q. Do you know if the railroad bridge across the Des Moines river in the City of Des Moines subsequently used by the Des Moines and St. Louis Railway Company was built in the summer of 1882?

A. They had commenced with it late in the fall on the east side.

Q. How do you know about the bridge?

A. Well I know from—in the first place from being called over there to tear down some buildings that were on the right of way on the east side of the river and we were secreted around the tubes and piles and timbers that was piled up on the east side of the river for the purpose of building that bridge across the river.

Q. You were not there for the purpose of building the bridge? A. No.

Q. The timbers? A. The timbers were there.

Q. There was some trouble about the right of way over there? A. Yes, sir.

Q. Some buildings in the way of the construction and the owners were opposed to moving them? A. Yes, sir.

Q. When was that?

A. My recollection is that was along in the latter part of September or October I wouldn't say positive about that. Either the latter part of September or October.

Q. Do you know of any third rail making a broad gauge line on the right of way of the St. Louis, Des Moines & Northern at that time?

A. There was one laid towards the fall of the year. It was getting along pretty late in the fall. I wouldn't say—it was

possibly along about the first of November the first I recollect of a third rail and I didn't observe just how far it was laid east, but it was laid west through the yards as far as the round house and at that time it was laid for the purpose of changing the bodies of narrow gauge cars and wide gauge cars from the narrow gauge truck to the wide gauge truck.

Q. Was there some device used for that purpose?

A. Yes, sir; we built an incline right west of Eleventh street if my memory serves me right where we run the narrow gauge trucks out one end and let the broad gauge trucks at the other end to catch the body as it came under and on each side of the incline was a rail and roller under it that caught the body of the car as it came out of the other end and picked up the other truck and transferred it first one way and then the other. Narrow gauge and then the broad gauge for the purpose of not having to load and unload cars.

Witness excused."

The parties here dictated into the record the following stipulation:

It is hereby stipulated that either party may object to any part of the foregoing testimony offered from the transcript in the case of the Chicago, Milwaukee & St. Paul Railway Company vs. the Des Moines Union Railway Company, in the District Court of the State of Iowa in and for Polk County, as either irrelevant or immaterial, provided, that such objection shall be made and filed, with the reasons for the same, prior to the hearing of this case upon the merits.

In the Circuit Court of the United States in and for the
Southern District of Iowa, Central Division.

The Chicago, Milwaukee & St. Paul Railway Company, and
the Wabash Railroad Company, Plaintiffs,
No. 2449. vs. In Equity.

The Des Moines Union Railway Company, and others,
Defendants.

Stipulation.

To obviate the need of formal proof thereon, and to shorten the record, the following facts are stipulated and agreed to in reference to local aid taxes in Boone County, Iowa, for the purposes of the trial of this cause, and as between the parties to the above cause:

Des Moines Township.

On a proper petition, and in lawful proceedings, an election notice was published and posted by the township trus-

tees, and in all respects as provided by law in Des Moines Township, Boone County, Iowa, in the following form:

“Trustees of Des Moines Township

To

Whom It May Concern.

Election Notice.

To the qualified Electors of Des Moines Township, Boone County, Iowa:

Notice is hereby given that there will be a special election holden at the City Council room in Boone, Iowa, and also at the office of the Township Clerk of Des Moines Twp. Boonesboro, Iowa, in Des Moines Township Boone County, Iowa, on Wednesday the 11th day of May 1881, at which election there will be submitted to the electors of said Township the following question to-wit:

Shall a tax of five per cent be levied in the year 1881 on the assessment of that year upon the Real and Personal property of said Des Moines Tp. subject to taxation in pursuance of the provisions of Chapter 123 Laws of the Sixteenth General Assembly as amended, for the purpose of aiding the St. Louis, Des Moines & Northern Railway Company in constructing its Railway from Boone, Boone County, Iowa, to a connection with a line owned or operated by the Wabash St. Louis & Pacific Railway Company. The said tax to be due and payable when said road shall have been constructed to Boone through said Township and the cars running from said connection with the Wabash St. Louis & Pacific Railroad Company to Boone Iowa. Provided, that in no case shall such tax or any part thereof become due, collectable or payable until said road is completed between the points last above mentioned and when so completed one half of the per centum of tax levied shall be due and collectable and the other half shall be due and collectable the next year. The foregoing tax is voted to the St. Louis, Des Moines and Northern Railway Company upon the following express conditions:

1st. Said Rail Road shall never pass under the control of any of the lines constituting what is known as the Chicago Pool or of the Chicago Milwaukee & St. Paul R. R. Company.

2nd. There shall be no charges under any form or guise at the Southern terminus of the St. Louis, Des Moines & Northern Railway for loading or unloading cars made by reason of a difference of gauge of any connecting road.

3rd. Said St. Louis, Des Moines & Northern Railway Company shall not discriminate against Boone and in favor of Des Moines.

4. The Depot of said Road is to be located in the 4th addition to the City of Boone between 4th and 8th Streets and on or west of Harrison Street.

5. The said St. Louis Des Moines & Northern Railway Company shall complete their said road to Boone on or before July 1, 1882, time being the essence of the contract and in default of said road being so completed by said time the Board of Supervisors of Boone County shall cancel said 5 per cent tax upon the Books of the Treasurer of Boone County.

6th. Said St. Louis, Des Moines & Northern Railway Company shall begin work in good faith between Boone and Des Moines on said Railway within ninety days after the said 5 per cent tax is voted, and shall also file its written acceptance of the terms and conditions contained in this petition with the Trustees of this Township and the Board of Supervisors of Boone County, Iowa, within said 90 days or said tax so voted shall be null and void.

If the above conditions, or either of them, are violated by the St. Louis, Des Moines & Northern Railway, its successors or assigns then any and all taxes paid in aid of its construction by this Township shall be refunded to the parties who may have paid the same, or to their representatives or assigns on demand.

The polls will be opened at 9 o'clock A. M. of said day and will be kept open until 6 o'clock P. M. thereof for the purpose of receiving the votes on such proposition. Those desiring to vote for said proposition will have written or printed on their ballots "For Taxation" and those wishing to vote against said proposition will have written or printed on their ballots "Against Taxation."

JOHN M. WANE,
L. H. HULL,
THOS. BOWMAN,
Township Trustee.

Attest: C. T. Brewer,
Township Clerk.

Return.

State of Iowa,
Boone County,
Des Moines Township—ss.

I Charles T. Brewer, do on oath state that I am Township Clerk of Des Moines Township, Boone County, Iowa. That

in pursuance of the order of the Board of Trustees of said Township made on the 29th day of April 1881, I caused the within notice of Special Election to be published in the Boone Standard a Newspaper published in the City of Boone County of Boone, State of Iowa, on the 30th day of April 1881, as will more fully appear from the annexed affidavit of John M. Brainard publisher hereunto attached, and that on the 30th day of April 1881 I posted the same in 5 public places in said Township, to-wit:

- 1st. One at the Post Office in the City of Boone, Iowa.
- 2nd. One at the North Door of the City Council building in Boone, Iowa.
- 3rd. One at the Post Office in the Town of Booneboro Iowa.
- 4th. One at the East Door of the Court House in Boonsboro Iowa.
- 5th. One at the Guide post at the forks of Pilchers Land & Road to Logansport from Boonsboro as required by law.

C. T. BREWER.

Subscribed and sworn to before me by Charles T. Brewer
this 30 day of April 1881. As witness my hand and seal.

LORAN W. REYNOLDS,
Notary Public Boone Co. Ia.

(Copy of Notarial Seal)

I, John M. Brainard solemnly swear that I am the publisher of the Boone Standard, a weekly newspaper printed and published at Boone and State of Iowa, and that the advertisement hereunto attached was published in said newspaper for one week to-wit, on the 30th day of April A. D. 1881.

Signed this 30th day of April A. D. 1881.

JOHN M. BRAINARD, Publisher.

State of Iowa,
Boone County—ss.

Sworn to before me and subscribed in my presence by the said
Jno. M. Brainard Publisher this 30th day of April A.
D. 1881.

L. W. REYNOLDS,
Notary Public in and for Boone County, Iowa."
(Copy of Notarial Seal)

That pursuant to the said notice an election was legally held on or about May 11th 1881, and said proposition was adopted and carried by a majority of the votes cast at said election, to-wit: by 819 votes for and 29 votes against said tax aid.

That pursuant to law the Township Trustees certified the result of said election to the Auditor of said County by the following certificate, and said tax was duly levied:

"Certificate.

Des Moines Township, Boone County—ss.

To T. S. Boyd the Auditor of Boone County Iowa:

In pursuance to Chapter 123 of the Laws of the Sixteenth General Assembly of the State of Iowa as amended, I Charles T. Brewer, Township Clerk of said Des Moines Township in said Township on Wednesday the eleventh day of May 1881 do verify to you that at such election there was submitted to the electors of said Township the following question, to-wit:

Shall a tax of 5 per cent be levied in the year 1881 on the assessment of that year upon the Real and Personal property in said Des Moines Township subject to Taxation, in pursuance of the provisions of Chapter 123 Laws of the Sixteenth General Assembly, as amended for the purpose of aiding the St. Louis, Des Moines & Northern Railway Company in constructing its railway from Boone, Boone County Iowa, to a connection with a line owned or operated by the Wabash, St. Louis & Pacific Railway Company. The said Tax to be due and payable when said Road shall have been constructed to Boone through said Township and the cars running from said connection with the Wabash St. Louis & Pacific Railway Company to Boone Iowa. Provided, that in no case shall such tax or any part thereof become due, collectable or payable until said road is completed between the points last above mentioned, and when so completed one half of the percentum of tax levied shall be due and collectable and the other half shall be due and collectable the next year. The foregoing tax is voted to the St. Louis, Des Moines & Northern Railway Company upon the following express conditions:

1. Said Railroad shall never pass under the control of any of the lines constituting what is known as the "Chicago Pool" or of the Chicago Milwaukee & St. Paul R. R. Company.
2. There shall be no charges under any form or guise at the Southern terminus of the St. Louis, Des Moines & Northern Railway for loading or unloading cars made necessary by reason of a difference of gauge of any connecting road.

3. Said St. Louis Des Moines & Northern Railway Company shall not discriminate against Boone and in favor of Des Moines.

4. The Depot of said Railway is to be located in the 4 addition to the City of Boone between 4th and 8th Streets and on or west of Harrison Street.

5. The said St. Louis Des Moines & Northern Railway Company shall complete their said road to Boone on or before July 1, 1882, time being the essence of the contract and in default of said Road being so completed by said time the Board of Supervisors of Boone County shall cancel said 5 per cent tax upon the Books of the Treasurer of Boone County.

6. Said Saint Louis Des Moines & Northern Railway Company shall begin work in good faith between Boone & Des Moines on said Railway within ninety days after the said five per cent tax is voted and shall also file its written acceptance of the terms and conditions contained in this Petition with the Trustees of this Township and the Board of Supervisors of Boone County, Iowa, within said ninety days or said tax so voted shall be null and void.

If the above conditions or either of them are violated by the St. Louis Des Moines & Northern Railway, its successors or assigns, then any and all taxes paid in aid of its construction by this Township shall be refunded to the parties who may have paid the same, or their representatives or assigns on demand. That such election was duly held in pursuance of a notice of which an exact copy is hereto attached as a part of this certificate which notice was duly published as required by law. That at such election there were cast in Boone precinct 538 & one blank, and in Boonesboro precinct 310 & 5 blanks Ballots of which 819 ballots were cast for such proposition and tax and 29 ballots were cast against said proposition and tax. That a majority of the ballots cast at such election was cast in favor of such proposition and tax, and that the judges of election after canvassing said ballots declared said proposition and tax to have been duly carried and adopted, and in pursuance of an order of said judges of election, then and there made and the requirements of the Law, we do further certify to you:

1. That the rate per centum of tax thus voted in aid of the St. Louis, Des Moines & Northern Railway Company at such special election was 5 per cent.

2. That said tax is to be levied in the year 1881 and on the valuation of that year. One half of the per centum of tax so levied is to be collected in 1882 and the other half thereof in 1883. Provided, that in no case shall such tax or any part

thereof become due, collectible or payable until said Road is completed through said Des Moines Township and the cars running thereon from a connection with the Wabash, St. Louis & Pacific Railway Company to Boone, Boone County, Iowa, and when so completed one half of the per centum of the said tax shall be due and collectable and the other half shall be due and collectable the next year.

The foregoing tax is voted to the St. Louis Des Moines & Northern Railway Company upon the following express conditions:

1. Said Railroad shall never pass under the control of any of the lines constituting what is known as the "Chicago Pool" or of the Chicago, Milwaukee & St. Paul R. R. Company.

2. There shall be no charges under any form or guise at the Southern terminus of the St. Louis Des Moines & Northern Railway for loading or unloading cars made necessary by reason of a difference of gauge of any connecting road.

3. Said St. Louis Des Moines & Northern Railway Company shall not discriminate against Boone and in favor of Des Moines.

4. The Depot of said Railway is to be located in the 4th addition to the City of Boone between 4th and 8th Streets and on or West of Harrison Street.

5. The said St. Louis Des Moines & Northern Railway Company shall complete their said road to Boone on or before July 1, 1882, time being the essence of the contract, and in default of said road being so completed by said time the Board of Supervisors of Boone County shall cancel said five per cent tax upon the Books of the Treasurer of Boone County.

6. Said St. Louis, Des Moines & Northern Railway Company shall begin work in good faith between Boone and Des Moines on said Railway within ninety days after the said five per cent tax is voted and shall also file its written acceptance of the terms and conditions contained in this petition with the Trustees of this township and the Board of Supervisors of Boone County, Iowa, within said ninety days or said tax so voted shall be null and void.

If the above conditions or either of them are violated by the St. Louis, Des Moines & Northern Railway its successors or assigns, then any and all taxes paid in aid of its construction by

this Township shall be refunded to the parties who may have paid the same, or to their representatives or assigns on demand.

L. H. HULL,
THOS. BOWMAN,
JOHN M. WANE,
Township Trustees.

Attest: C. T. Brewer, Township Clerk.

Filed for Record May 12th A. D. 1881 at 5:5 P. M. C. A. Elersole, Recorder."

Worth Township.

That on May 12th, 1881, another special election was held in Worth Township in Boone County, Iowa, upon the proposition whether a tax of five per cent on the assessment of 1881 in said township should be voted in aid of the St. Louis, Des Moines & Northern Railway Company; that the notice of the said election last mentioned was identical with the notice hereinbefore set out in full for the election in Des Moines Township in said Boone County, except only that the name of the township was changed to Worth Township, and the place for the holding of the election was different.

That at the said election the said proposition was carried by a majority of the votes cast, and that the result of the said election was certified to the auditor of Boone County, Iowa, by a certificate identical in all respects, except as to the name of the township, the place of the election, the number of ballots cast, and the names of the persons making the certificate as township officers with the certificate of election in the said Des Moines Township, as hereinbefore set out.

Douglas Township.

That on May 18th, 1881, another special election was held in Douglas Township in Boone County, Iowa, upon the proposition whether a tax of five per cent on the assessment of 1881, in said township should be voted in aid of the St. Louis, Des Moines & Northern Railway Company; that the notice of the said election last mentioned was identical with the notice hereinbefore set out in full for the election in Des Moines Township in said Boone County, except only that the name of the township was changed to Douglas Township, and the place for the holding of the election was different.

That at the said election the said proposition was carried by a majority of the votes cast, and that the result of the said election was certified to the Auditor of Boone County, Iowa, by a certificate identical in all respects, except as to the name

of the township, the place of the election, the number of ballots cast, and the names of the persons making the certificate as Township Officers, with the certificate of election in the said Des Moines Township, as hereinbefore set out.

Acceptance.

That afterwards, on the 8th day of August, 1881, there was filed with the proper authorities of Boone County, Iowa, three writings in the words and figures following, to-wit:

"The Saint Louis Des Moines & Northern Ry. Co.
to
The Board of Supervisors of Boone County, Iowa.

Acceptance of Tax.

To the Board of Supervisors of Boone County, Iowa.

The Saint Louis, Des Moines & Northern Railway Company hereby accepts the Tax heretofore voted in Des Moines Township to aid in the construction of said Railway upon the terms and conditions upon which said Tax was voted, and agrees in the acceptance of said Tax to observe and carry out the said terms and conditions.

THE SAINT LOUIS, DES MOINES & NORTH-
ERN RAILWAY COMPANY,

By J. S. Runnells, Vice President.

(Company Seal)

Attest:

J. S. Polk, Secretary.

Filed for Record August 8th, 1881, at 11½ A. M.

C. A. EBERSOLE, Recorder."

"St. Louis, Des Moines and Northern Ry. Co.
to

The Board of Supervisors of Boone County, Iowa.

Acceptance of Tax.

To the Board of Supervisors of Boone County, Iowa.

The Saint Louis, Des Moines & Northern Railway Company hereby accepts the Tax heretofore voted in Worth Township to aid in the construction of said Railway upon the terms and conditions upon which said Tax was voted, and agrees

in the acceptance of said Tax to observe and carry out the said terms and conditions.

THE SAINT LOUIS, DES MOINES & NORTHERN RAILWAY COMPANY,

By J. S. Runnells, Vice President.

(Company Seal)

Attest:

J. S. Polk, Secretary.

Filed for Record August 8th, 1881, at 10½ A. M.

C. A. EBERSOLE, Recorder."

"St. Louis, Des Moines and Northern Ry. Co.

to

The Board of Supervisors of Boone County, Iowa.

Acceptance of Tax.

To the Board of Supervisors of Boone County, Iowa.

The Saint Louis, Des Moines & Northern Railway Company hereby accepts the Tax heretofore voted in Douglas Township to aid in the construction of said Railway upon the terms and conditions upon which said Tax was voted, and agrees in the acceptance of said Tax to observe and carry out the said terms and conditions.

THE SAINT LOUIS, DES MOINES & NORTHERN RAILWAY COMPANY,

By J. S. Runnells, Vice President.

(Company Seal)

Attest:

J. S. Polk, Secretary.

Filed for Record August 8th, 1881, at 10½ A. M.

C. A. EBERSOLE, Recorder."

That in due time the taxes so voted were duly levied in each of said Townships, and the amount of such levy, to-wit, a five per cent tax upon the assessment of 1881, was in Worth Township \$ 9,929.00
in Douglas Township 7,189.25
and in Des Moines Township, which included the Town of Boonsboro and the City of Boone, the amount was 47,420.40

and that the tax so levied in aid of the said St. Louis, Des Moines & Northern Railway Company in

said three townships in Boone County, Iowa,
amounted to an aggregate of\$64,538.65

That in due time the said taxes were collected by the County Treasurer of Boone County, and were paid over upon the receipt of the Treasurer of said St. Louis, Des Moines & Northern Railway Company to an amount in the aggregate of \$61,637.72.

To obviate the need of formal proof thereon, and to shorten the record, the following facts are stipulated and agreed to in reference to local aid taxes in Greene County, Iowa, for the purpose of the trial of this Cause, and as between the parties to the above cause:

Jefferson Township.

On a proper petition, and in lawful proceedings, an election notice was published and posted by the township trustees, and in all respects as provided by law, in Jefferson Township, Greene County, Iowa, in the following form:

"Election Notice.

To the qualified electors of Jefferson Township Greene County, Iowa.

Notice is hereby given that there will be a special election holden at the Court House in Jefferson Township Greene County Iowa, on Wednesday the ninth day of March A. D. 1881, at which election there will be submitted to the electors of said Township the following question, to-wit: Shall a tax of five per cent be levied in the year 1881 and on the assessment of that year on the real and personal property in said Jefferson Township which shall be subject to taxation in pursuance of the provision of Chapter 123 of the laws of the 16th General Assembly as amended for the purpose of aiding the Des Moines Northwestern Railway Company in extending its railway from the town of Panora Guthrie County Iowa to the Chicago and Northwestern Railroad at Jefferson Iowa and from the town of Waukee Iowa to the City of Des Moines Ia. one half of the per centum of tax so levied to be collected in 1881 and the other half thereof in 1882, which tax when collected is to be paid over to said Railway Company or its assigns, when it shall do the work and construct its Railway from Panora in Guthrie County Iowa to the Chicago and Northwestern Railroad at Jefferson Ia and run its cars thereon; provided such work shall be done along the line of said road and the cars run thereon between the points above mentioned before the first day of December 1881, and provided further that in

no case shall such tax or any part thereof become due collectible or payable until said road is fully completed and in operation between the points last above mentioned and when so completed and in operation one half of the per centum of tax levied shall be due and collectible. Provided further that said Des Moines Northwestern Railway shall extend its present line of road by building a new and independent road bed and track from the town of Waukee in Dallas County Iowa to the city of Des Moines Iowa and have the same in continued operation on or before the first day of December 1882, and that the remaining half of said tax shall in no case be due and payable until such road shall be so built and operated from the town of Waukee Iowa to the city of Des Moines Iowa. Provided further that the said Des Moines Northwestern Rail-Road Company shall build locate and maintain a depot on its line of road within one half mile of the Court House in the town of Jefferson Iowa. The polls will be opened at 9 o'clock A. M. of said day and will be kept open until 6 o'clock P. M. thereof for the purpose of receiving the votes on such proposition. Those desiring to vote for said proposition will have written or printed on their ballots "For taxation" and those wishing to vote against said proposition will have written or printed on their ballots Against taxation.

ALPHEUS KING,
A. H. MILLS,
J. M. CLINE,

Attest: J. W. Cline,
Township Clerk.

Return Showing Publication of Notice.

State of Iowa Greene County ss. I, James E. Cline do state on oath that I am Township Clerk of Jefferson Township, Greene County Iowa, that in pursuance of the order of the Board of Township Trustees of said Township made on the 24th day of February 1881 I caused the within notice of special election to be published in the Jefferson Bee and Greene County Gazette, newspapers published in Jefferson Greene County Iowa on the 24th day of February and on the 3rd day of March 1881 as will more fully appear from the annexed affidavit of the publishers hereunto attached and that on the 24th day of February 1881 I posted the same in five public places in said Township, to wit: One at the office of Harrington and Moorhouse at the depot, one at the Post Office, one at the Court House, one at the American Express Office, one at the Revere house, as required by law.

JAMES E. CLINE,
Clerk of Jefferson Township.

Subscribed and sworn to before me by James E. Cline this 8th day of March 1881, as witness my hand and seal.

A. KING,
Justice of the Peace.

Filed March 31st 1881 at 3 o'clock P. M."

That pursuant to the said notice an election was legally held in said Township on the ninth day of March 1881, and said proposition was adopted and carried by a majority of the votes cast at said election, to-wit: By 222 votes for, and 45 votes against said tax aid.

That pursuant to law the Township officers certified the result of said election to the Auditor of said County by the following Certificate, and said tax was duly levied:

Certificate.

Jefferson Township,
Greene County—ss.

To Andrew Watts the Auditor of Greene County Iowa.

In pursuance of Chapter 123 of the laws of the Sixth General Assembly of the of Iowa as amended we J. E. Cline Township Clerk of Jefferson of Jefferson Township and F. M. Cline duly appointed as one of the Clerks of a special election held at the Court House in said Township on Wednesday the ninth day of March 1881 do certify to you, that at such election there was submitted to the electors of said township the following questions to-wit: Shall a tax of five per cent be levied in the year 1881 and on the assessment of that year, on the real and personal property in said Jefferson Township which shall be subject to taxation in pursuance of the provision of Chapter 123 of the laws of the 16th General Assembly as amended for the purpose of aiding the Des Moines Northwestern Railway Company in extending its railway from the town of Panora Guthrie County Iowa to the Chicago and Northwestern Railroad in Jefferson Greene County Iowa, and from Waukee in Dallas County Iowa to the city of Des Moines Iowa, one half of the per centum of tax so levied to be collected in 1881 and the other half thereof in 1882 which tax when collected is to be paid over to said Railway Company or its assigns when it shall do the work and construct its railway from Panora in Guthrie County Iowa to the Chicago and Northwestern Railroad at Jefferson Iowa and run its cars thereon; provided such work shall be done along the line of said road and the cars run thereon between the points above mentioned before the first day of December 1881; and provided further that in no case shall such tax or any part

thereof become due, collectible or payable until said road is fully completed and in operation between the points last above mentioned and when so completed and in operation one half of the per centum of tax levied shall be due and collectible, provided further that said Des Moines Northwestern Railway shall extend its present line of road by building a new and independent road bed and track from the town of Waukee in Dallas County Iowa to the city of Des Moines Iowa and have the same in continued operation on or before the first day of December 1882 and that the remaining half of said tax shall in no case be due and payable until such road shall be so built and operated from the town of Waukee Iowa to the city of Des Moines Provided further that the said Des Moines Northwestern Railroad Company shall build locate and maintain a depot on its line of road within one half mile of the Court House in the Town of Jefferson Greene County Iowa. That such election was duly held in pursuance of a notice of which an exact copy is hereto attached as a part of this certificate, which notice was duly published as required by law. That at such election there were cast two hundred and sixty seven ballots of which two hundred and twenty two ballots were cast for such proposition and tax, and forty five ballots were cast against said proposition and tax. That a majority of the ballots cast at such election were cast in favor of such proposition and tax, and that the Judges of election after canvassing said ballots declared said proposition and tax to have been duly carried and adopted and in pursuance of an order of said Judges of election then and there made and the requirements of the law we do further certify to you: 1. That the rate per centum of tax thus voted in aid of the Des Moines Northwestern Railway at such special election was five per cent, 2. That said tax is to be levied in the year 1881 and on the valuation of that year, One half of the per centum of tax so levied is to be collected in 1881 and the other half thereof in 1882. Provided however that in no case shall such tax or and part thereof become due collectible or payable until the Des Moines Northwestern Railway is fully completed from Panora in Guthrie County Iowa to the Chicago and Northwestern Railroad in Jefferson Greene County Iowa and when so completed one half of the per centum of tax levied shall be due and collectible. 3. That the remaining half of said tax when collected is to be paid over to said Railway Company or its assigns when it shall do the work and construct its railway from the town of Waukee in Dallas County Iowa to the City of Des Moines and run its cars thereon. Provided such work shall be done along the line of said road and the

cars run thereon between the points above mentioned before the first day of December 1882, as herein before provided.

In witness whereof we have hereunto set our hands this tenth day of March 1881.

J. E. CLINE,
Township Clerk.

FRANK M. CLINE,
Clerk of Election.

Filed Mch. 31, 1881 at 3 o'clock P. M."

Franklin Township.

On a proper petition, and in lawful proceedings, an election notice was published and posted by the township trustees, and in all respects as provided by law, in Franklin Township, Greene County, Iowa, in the following form:

Election Notice.

To the qualified electors of Franklin Township Greene County Iowa: Notice is hereby given that there will be a special election holden at the Centre School House in Franklin Township Greene County Iowa on Monday the 9th day of May 1881 at which election there will be submitted to the electors of said township the following question to-wit: Shall a tax of three per cent be levied in the year 1881 and on the assessment of that year on the real and personal property in said Franklin Township which shall be subject to taxation in pursuance of the provisions of Chapter 123 of the laws of the 16th General Assembly as amended for the purpose of aiding the Des Moines Northwestern Railway Company in extending its railway from the town of Panora Guthrie County Iowa to Jefferson Greene County Iowa one half of the per centum of tax so levied to be collected in 1881 and the other half thereof in 1882 which tax when collected is to be paid over to said Railway Company or its assigns when it shall do the work and construct its railway from Panora Guthrie County Iowa to Jefferson Greene County Iowa and run its cars thereon; provided such work shall be done along the line of said road and the cars run thereon between the points above mentioned before the first day of November 1881 and provided further that in no case shall such tax or any part thereof become due collectible or payable until said road is fully completed between the points last above mentioned and when so completed one half of the per centum of tax levied shall be due and collectible and the other half shall be due and collectible the next year. Provided further that a depot shall be located built and maintained within one mile of the centre of Franklin Township before December 1st 1881. Pro-

vided further that said Des Moines Northwestern Railway Company shall run their cars to the city of Des Moines on or before the first day of December, 1882, and in no case shall the last half of said tax be due until the cars run to Des Moines, Iowa. The polls will be opened at 9 o'clock A. M. of said day and will be kept open until 6 o'clock P. M. thereof for the purpose of receiving the votes on such proposition. Those desiring to vote for said proposition will have written or printed on their ballots "For Taxation", and those wishing to vote against said proposition will have written or printed on their ballots "Against taxation."

R. W. MILLER,
O. L. THORP,
ALEX ZELLER,
Township Trustees.

Attest:

G. W. Gilroy,
Township Clerk.

Dated April 27, 1881.

Return Showing Publication of Notice.

State of Iowa,
Greene County—ss.

I, G. W. Gilroy do state on oath that I am township clerk of Franklin Township Greene County, Iowa, that in pursuance of the order of the Board of Township Trustees of said Township made on the 27th day of April 1881, I caused the within notice of special election to be published in the Jefferson Bee a newspaper published in Greene County Iowa on the 28th days of April 1881 as will more fully appear from the annexed affidavit of O. R. Gray hereto attached and that on the 27th and 28th days of May 1881, I posted the same in five public places in said township to-wit: One at the Center School House; One at Holmes blacksmith shop, one at the cross roads near A. Hoyts, One at cross roads near R. Allens, one at Union School House all in Franklin Township as required by law.

G. W. GILROY,
Clerk.

Subscribed and sworn to before me by G. W. Gilroy this ninth day of May 1881 as witness my hand and seal.

(Notarial Seal)

A. M. HEAD,
Notary Public.

I C. R. Gray, one of the publishers of the Bee a newspaper of general circulation published at Jefferson the County Seat

of Greene County do hereby certify that the within and foregoing notice was published in said paper two consecutive times to-wit: in the issues bearing date April 28th and May 5th 1881, as directed.

Witness my hand this 9th day of May 1881.

O. R. GRAY.

Printers fee \$5.00.

Subscribed in my presence and sworn to before me by the said O. R. Gray this 9th day of May 1881.

(Notarial Seal)

A. M. HEAD,
Notary Public."

That pursuant to the said notice an election was legally held in said Township on the 9th day of May 1881, and said proposition was adopted and carried by a majority of the votes cast at said election, to-wit: By 73 votes for and 15 votes against said tax aid.

That pursuant to law the Township Officers certified the result of said election to the Auditor of said County by the following certificate, and said tax was duly levied:

"Certificate.

Franklin Township,
Greene County—ss.

To Andrew Watts the Auditor of Greene County Iowa:

In pursuance of Chapter 123 of the laws of the Sixteenth General Assembly of the state of Iowa as amended we G. W. Gilroy Township Clerk of Franklin Township and R. Allen duly appointed as one of the Clerks of a special election held at the Centre School House in said Township on Monday the ninth day of May 1881, do certify to you: That at such election there was submitted to the electors of said Township the following question to-wit: Shall a tax of three per cent be levied in the year 1881, and on the assessment of that year on the real and personal property in said Franklin Township which shall be subject to taxation in pursuance of the provisions of Chapter 123 of the laws of the 16th General Assembly as amended for the purpose of aiding the Des Moines Northwestern Railway Company in extending its railway from the town of Panora Guthrie County Iowa to Jefferson Greene County Iowa one half of the per centum of tax so levied to be collected in 1881 and the other half thereof in 1882 which tax when collected is to be paid over to said Railway Company or its assigns when it shall do the work and construct its railway from Panora Guthrie County, Iowa to Jefferson Greene County Iowa and run its cars thereof provided such

work shall be done along the line of said road and the cars run thereon between the points above mentioned before the first day of November 1881 and provided further that in no case shall such tax or any part thereof become due collectible or payable until said road is fully completed between the points last above mentioned and when so completed one-half of the per centum of tax levied shall be due and collectible and the other half shall be due and collectible the next year. Provided further that a depot shall be located built and maintained within one mile of the centre of Franklin Township before December 1st 1881. Provided further that said Des Moines Northwestern Railway Company shall run their cars to the city of Des Moines on or before the first day of December 1882, and in no case shall the last half of said tax be due until the cars run to Des Moines Iowa. That such election was duly held in pursuance of a notice of which an exact copy is hereto attached as a part of this certificate which notice was duly published as required by law. That at such election there were cast eighty eight ballots of which seventy three ballots were cast for such proposition and tax and fifteen ballots were cast against said proposition and tax 2 votes "for taxation" voted together thrown out. That a majority of the ballots cast at such election were cast in favor of such proposition and tax and that the Judges of election after canvassing said ballots declared said proposition and tax to have been duly carried and adopted and in pursuance of an order of said Judges of election then and there made and the requirements of the law we do further certify to you: 1. That the rate per centum of tax thus voted in aid of the Des Moines Northwestern Railway at such special election was three per cent. 2. That said tax is to be levied in the year 1881 and on the valuation of that year one half of the per centum of tax so levied is to be collected in 1881 and the other half thereof in 1882. Provided however that in no case shall such tax or any part thereof become due collectible or payable until the Des Moines Northwestern Railway is fully completed from Panora Guthrie County Iowa to Jefferson Greene County Iowa and when so completed one half of the per centum of tax levied shall be due and collectible and the other half shall be due and collectible the next year. 3. That said tax when collected is to be paid over to said Railway Company or its assigns when it shall do the work and construct its railway from Panora Guthrie County Iowa to Jefferson Greene County Iowa and run its cars thereon. Provided such work shall be done along the line of said road and the cars run thereon between the points above mentioned before the first day of

November 1881. Provided further that a depot shall be located built and maintained within one mile of the centre of Franklin Township before December 1st 1881. Provided further that said Des Moines Northwestern Railway Company shall run their cars to the city of Des Moines on or before the first day of December 1882 and in no case shall the last half of said tax be due until the cars run to Des Moines Iowa.

In witness whereof we have hereunto set our hands this ninth day of May 1881.

G. W. GILROY,
Township Clerk.
R. ALLEN,
Clerks of Election.

Filed May 12th, 1881, at 8 o'clock A. M.

Highland Township.

On a proper petition, and in lawful proceedings, an election notice was published and posted by the township trustees, and in all respects as provided by law, in Highland Township, Greene County, Iowa, in the following form:

"Notice.

To the qualified electors of Highland Township, Greene County, Iowa. Notice is hereby given that there will be a special election holden at the section school house in Highland Township, Greene County, Iowa, on the fourteenth day of April 1881 at which election there will be submitted to the electors of said Township the following question to-wit: Shall a tax of five per cent be levied in the year 1881, and on the assessment of that year on the real and personal property in said Highland Township which shall be subject to taxation in pursuance of the provisions of Chapter 123 of the laws of the 16th General Assembly as amended for the purpose of aiding the Des Moines Northwestern Railway Company in extending its railway from the town of Panora, Guthrie County, Iowa to the North line of Greene County Iowa in Highland or Cedar Townships one half of the per centum of tax so levied to be collected in 1881, and the other half thereof in 1882, which tax when collected is to be paid over to said Railway Company or its assigns when it shall do the work and construct its railway from Panora, Guthrie County, Iowa to the north line of Greene County, Iowa in Highland or Cedar Townships and run its cars thereon; provided such work shall be done along the line of said road and the cars run thereon between the points above mentioned before the fourth day of July 1882, and provided further that in no case shall such tax or any part thereof become due collectible or payable until said road is fully com-

pleted between the points last above mentioned and when so completed one half of the per centum of tax levied shall be due and collectible and the other half shall be due and collectible the next year. Provided further that a depot shall be located, built and maintained within one and one-half miles of east south or west of the center of Highland Township before July 4th, 1882. The polls will be opened at 9 o'clock A. M. of said day and will be kept open until 6 o'clock P. M. thereof for the purpose of receiving the votes on such proposition. Those desiring to vote for said proposition will have written or printed on their ballots "For Taxation" and those wishing to vote against said proposition will have written or printed on their ballots "Against taxation".

JOSEPH CHURDAN ST.

J. M. FITZ,

W. R. GROVES,

Township Trustees.

Attest: Joseph Churdan, Jr., Township Clerk.

Dated Mar. 28, 1881.

Return Showing Publication of Notice.

State of Iowa,

Greene County—~~RR.~~

I, Joseph Churdan, Jr. do state on oath that I am Township Clerk of Highland Township, Greene County, Iowa, that in pursuance of the order of the Board of Township Trustees of said Township made on the 28 day of March 1881 I caused the within notice of special election to be published in the Jefferson Bee, a newspaper published in Greene County, Iowa, on the 31 day of March, 1881, as will more fully appear from the annexed affidavit of Emmet W. Bates, J. P. hereto attached and that on the 31 day of March, 1881, I posted the same in five public places in said township, to-wit: One at the Prairie Creek Bridge, One at the James Towers Bridge, One at the John Casgriff Bridge, one at the Section School House, one at the Southeast corner of H. W. Rogers fence.

JOSEPH CHURDAN, Jr., T. P. Clerk.

Subscribed and sworn to before me by Joseph Churdan, Jr., on this Fourth day of April, 1881, as witness my hand and seal.

(Seal)

EMMET W. BATES, J. P.

That pursuant to the said notice an election was legally held in said Township on the 14th day of April, 1881, and said prop-

osition was adopted and carried by a majority of the votes cast at said election, to-wit: By 17 votes for and 8 votes against said tax aid.

That pursuant to law the Township Officers certified the result of said election to the Auditor of said County by the following Certificates, and said tax was duly levied:

"Certificate.

Highland Township,

Greene County—ss.

To Andrew Watts, the Auditor of Greene County, Iowa:

In pursuance of Chapter 123 of the laws of the Sixteenth General Assembly of the state of Iowa as amended, we, Joseph Churden, Jr., Township Clerk of Highland Township, and Emmet W. Bates duly appointed as one of the Clerks of a special election held at Section School House in said Township on Thursday the fourteenth day of April, 1881, do certify to you: That at such election there was submitted to the electors of said Township the following questions, to-wit: shall a tax of five (5) per cent be levied in the year 1881 and on the assessment of that year on the real and personal property in said Highland Township which shall be subject to taxation in pursuance of the provisions of Chapter 123 of the laws of the 16th General Assembly as amended for the purpose of aiding the Des Moines Northwestern Railway Company in extending its railway from the Town of Panora, Guthrie County, Iowa, to the North line of Greene County in Highland or Cedar Townships, one half of the per centum of tax so levied to be collected in 1881, and the other half thereof in 1882, which tax when collected is to be paid over to said Railway Company or its assigns when it shall do the work and construct its railway from Panora, Guthrie County, Iowa, to the north line of Greene County, Iowa, in Highland or Cedar Townships and run its cars thereon; provided such work shall be done along the line of said road and the cars run thereon between the points above mentioned before the fourth day of July 1882, and provided further that in no case shall such tax or any part thereof become due collectible or payable until said road is fully completed between the points last above mentioned and when so completed one half of the per centum of tax levied shall be due and collectible and the other half shall be due and collectible the next year. Provided farther that a depot shall be located, built and maintained within one and one half miles east, south or west of the center of Highland Township, before July 4th, 1882. That such election was duly held in pursuance of a notice of which an exact copy is hereto attached as a part

of this certificate which notice was duly published as required by law. That at such election there were cast (26) twenty-six ballots of which (17) seventeen ballots were cast for such proposition and tax, and (8) eight ballots were cast against said proposition and tax and one ballot being blank. That a majority of the ballots cast at such election were cast in favor of such proposition and tax and that the judges of election after canvassing said ballots declared said proposition and tax to have been duly carried and adopted and in pursuance of an order of said Judges of election then and there made and the requirements of the law we do further certify to you: 1. That the rate per centum of tax thus voted in aid of the Des Moines Northwestern Railway at such special election was five per cent. 2. That said tax is to be levied in the year 1881 and on the valuation of that year, one half of the per centum of tax so levied is to be collected in 1881 and the other half thereof in 1882. Provided, however, that in no case shall such tax or any part thereof become due collectible or payable until the Des Moines Northwestern Railway is fully completed from Panora, Guthrie County, Iowa, to the North line of Greene County in Highland or Cedar Townships and run its cars thereon. Provided such work shall be done along the line of said road and the cars run thereon between the points above mentioned before the fourth day of July, 1882. Provided further that a depot shall be located, built and maintained within one and one half miles of the center of Highland Township, before July 4th, 1882.

In witness whereof we have herenunto set our hands this fourteenth day of April, 1881.

JOSEPH CHURDAN, JR.,
Township Clerk.

EMMET W. BATES,
Asst. Clerk.
Clerk of Election.

Filed April 16th, 1881, at 11:30 o'clock A. M.

Grant Township.

On a proper petition, and in lawful proceedings, an election notice was published and posted by the Township Trustees, and in all respects as provided by law, in Grant Township, Greene County, Iowa, in the following form:

"Election Notice.

To the qualified electors of Grant Township, Greene County, Iowa:

Notice is hereby given that there will be a special election holden at the Mill school house in Grant Township Greene County Iowa on Monday the 9th day of May 1881 at which election there will be submitted to the electors of said township the following question to-wit: Shall a tax of two per cent be levied in the year 1881 and on the assessment of that year on the real and personal property in said Grant Township which shall be subject to taxation in pursuance of the provisions of Chapter 123 of the laws of the 16th General Assembly as amended for the purpose of aiding the Des Moines Northwestern Railway Company in extending its railway from the town of Panora Guthrie County Iowa to the Chicago and Northwestern Railroad at Jefferson, one half of the per centum of tax so levied to be collected in 1881 and the other half thereof in 1882, which tax when collected is to be paid over to said Railway Company or its assigns when it shall do the work and construct its railway from Panora Guthrie County Iowa to the Chicago and Northwestern Railroad at Jefferson Greene County Iowa and run its cars thereon between the points above mentioned before the first day of December 1881, and provided further that in no case shall such tax or any part thereof become due collectible or payable until said road is fully completed between the points last above mentioned and when so completed one half of the per centum of tax levied shall be due and collectible and the other half shall be due and collectible the next year. The polls will be opened at 9 o'clock A. M. of said day, and will be kept open until 6 o'clock P. M. thereof for the purposes of receiving the votes on such proposition. Those desiring to vote for said proposition will have written or printed on their ballots "For Taxation" and those wishing to vote against said proposition will have written or printed on their ballots "Against taxation".

HENRY W. KELLOGG,
JOS. W. ANDERSON,
M. W. SMITH,

Township trustees.

Attest:

G. G. Eagleson,

Township Clerk. April 27, 1881.

Return Showing Publication of Notice.

State of Iowa,

Greene County—ss.

I G. G. Eagleson do state on oath that I am Town. Clerk of Grant Township Greene County Iowa that in pursuance of the order of the Board of Township Trustees of said Town-

ship made on the 27th day of April 1881 I caused the within notice of special election to be published in the Jefferson Bee a newspaper published in Jefferson Greene County Iowa on the 28th day of April 1881 as will more fully appear from the annexed affidavit of J. M. Rhoads hereto attached and that on the 27th day of April 1881 I posted the same in five public places in said township, to-wit: One at Bridge on Panorama Road, One at on Bridge on Hardin Crick at Wm. Andersons, One at one on Bridge Hill Bridge on Hardin crick, One at one on at Mill School House One at Bridge on Hardin Creek on the King Road.

G. G. EAGLESON.

Subscribed and sworn to before me by G. G. Eagleson this 28th day of April 1881 as witness my hand and seal.

(Notarial Seal)

J. F. HEAD,
Notary Public.

I J. M. Rhoads one of the publishers of the Bee a newspaper of general circulation published at Jefferson the County Seat of Greene County Iowa do hereby certify that the within and foregoing notice was published in said paper two consecutive times to-wit in the issues bearing date April 28th and May 5th 1881 as directed.

Witness my hand this 9th day of May 1881.

J. M. RHOADS.

Printers fee \$.....

Subscribed in my presence and sworn to before me by the said J. M. Rhoads this 9th day of May 1881.

(Notarial Seal)

A. M. HEAD,
Notary Public.

That pursuant to the said notice an election was legally held in said Township on the 9th day of May 1881, and said proposition was adopted and carried by a majority of the votes cast at said election, to-wit: By 90 ballots for and 34 ballots against said tax add.

That pursuant to law the Township Officers certified the result of said election to the Auditor of said County by the following Certificate, and said tax was duly levied:

"Certificate.

Grant Township,
Greene County—ss.

To Andrew Watts, the Auditor of Greene County, Iowa,

In pursuance of Chapter 123 of the laws of the 16th General Assembly of the state of Iowa as amended we G. G. Eagleson Township Clerk of Grant Township and A. C. Taggart duly appointed as one of the clerks of a special election held at the Mill School House in said Township on Monday the ninth day of May 1881, do certify to you: That at such election there was submitted to the electors of said township the following question, to-wit: Shall a tax of two per cent be levied in the year 1881 and on the assessment of that year on the real and personal property in said Grant Township which shall be subject to taxation in pursuance of the provisions of Chapter 123 of the laws of the 16th General Assembly as amended for the purpose of aiding the Des Moines Northwestern Railway Company in extending its railway from the town of Panorama Guthrie County Iowa to the Chicago & Northwestern Rail Road at Jefferson one half of the per centum of tax so levied to be collected in 1881 and the other half thereof in 1882. Which tax when collected is to be paid over to said Railway Company or its assigns when it shall do the work and construct its railway from Panorama Guthrie County Iowa to the Chicago & Northwestern Railroad at Jefferson Greene County Iowa and run its cars thereon provided such work shall be done along the line of said road and the cars run thereon between the points above mentioned before the first day of December 1881 and provided further that in no case shall such tax or any part thereof become due, collectible or payable until said road is fully completed between the points last above mentioned and when so completed one half of the per centum of tax levied shall be due and collectible and the other half shall be due and collectible the next year. That such election was duly held in pursuance of a notice of which an exact copy is hereto attached as a part of this certificate which notice was duly published as required by law. That at such election there were cast one hundred and twenty four ballots of which ninety ballots were cast for such proposition and tax and thirty-four ballots were cast against said proposition and tax. That a majority of the ballots cast at such election were cast in favor of such proposition and tax and that the Judges of election after canvassing said ballots declared said proposition and tax to have been duly carried and adopted and in pursuance of an order of said Judges of election then and there made and the requirements of the law we do further certify to you: 1 That the rate per centum of tax thus voted in aid of the Des Moines Northwestern Railway at such special election was two per cent. 2 That said tax is to be levied in the year 1881 and on the valuation of that year one half of the per centum of tax so levied is to be collected in 1881 and the other half thereof

in 1882. Provided however that in no case shall such tax or any part thereof become due collectible or payable until the Des Moines Northwestern Railway is fully completed from Panora Guthrie County, Iowa to the Chicago & Northwestern Railroad at Jefferson Greene County Iowa and when so completed one half of the per centum of the tax levied shall be due and collectible and the other half shall be due and collectible the next year. 3. That said tax when collected is to be paid over to said Railway Company or its assigns when it shall do the work and construct its railway from Panora Guthrie County Iowa to the Chicago & Northwestern Railroad at Jefferson Greene County Iowa and run its cars thereon Provided such work shall be done along the line of said road and the cars run thereon between the points above mentioned before the first day of December 1881. In witness whereof we have hereto set our hands this ninth day of May 1881.

G. G. EAGLESON,
Township Clerk.
A. C. TAGGART,
Clerks of Election.

Filed May 12th 1881 at 9 o'clock A. M.

That upon the assessment in each of the said four Townships in Greene County, on the rate called for in the election proceedings, to-wit: five per cent in Jefferson and Highland Townships, three per cent in Franklin Township, and two per cent in Grant Township, the levy on account of and for said tax aid amounted in

Jefferson Township to	\$12,424.99
Highland Township	6,355.88
Franklin Township	4,699.74
Grant Township	4,713.08

That of said taxes so voted and collected in said four Townships in Greene County, the sum of \$27,732.49 was paid over by the County Treasurer of said Green County upon the receipts given by F. M. Hubbell, Treasurer of said Des Moines Northwestern Railway Company, in the years 1881 to 1887 inclusive.

To obviate the need of formal proof thereon, and to shorten the record, the following facts are stipulated and agreed to in reference to local aid taxes in Calhoun County, Iowa, for the purposes of the trial of this cause, and as between the parties to the above cause:

Logan Township.

On a proper petition, and in lawful proceedings, an election notice was published and posted by the township trustees, and in all respects as provided by law, in Logan Township, Calhoun County, Iowa, in the following form:

"Election Notice.

To the Qualified Electors of Logan Township, Calhoun County, Iowa:

Notice is hereby given that a special election will be held at the Bowers School House in Logan Township, Calhoun County, Iowa, on Wednesday, the First day of June, 1881, at which election there will be submitted to the electors of said Township the following question, to-wit:

"Shall a tax of five per cent be levied in the year 1881 and on the assessment of that year, on the real and personal property in said Logan Township which shall be subject to taxation in pursuance of the provisions of Chapter 123 of the laws of the 16th General Assembly as amended, for the purpose of aiding the Des Moines Northwestern Railway Company in extending its railway from the town of Panora, Guthrie County, Iowa to the North line of Calhoun County, Iowa. One half of the per centum of tax so levied to be collected in 1881, and the other half thereof in 1882. Which tax when collected is to be paid over to the said Rail Way Company or its assigns, when it shall do the work and construct its railway from Panora, Guthrie County, Iowa, to the north line of Calhoun County, Iowa, and run its cars thereon; Provided such work shall be done along the line of said road and the cars run thereon between the points above mentioned before the first day of September 1882; and provided further that in no case shall such tax or any part thereof, become due, collectible or payable until said road is fully completed between the points last above mentioned, and where so completed one-half of the per centum of tax levied shall be due and collectible, and the other half shall be due and collectible the next year. Provided further that a depot shall be located and built within one mile of the center of Logan Township before September 1st, 1882.

The polls will be opened at 9 o'clock A. M. of said day, and will be kept open until 6 o'clock P. M., thereof, for the purpose of receiving the votes on such proposition. Those desiring to vote for said proposition will have written or printed on their ballots "For Taxation", and those wishing to vote

against said proposition will have written or printed on their ballots "Against Taxation".

A. T. BOWERS,
E. W. POWERS,
Township Trustees.

Attest:

Rollin Burch, Township Clerk.

Return Showing Publication of Notice.

State of Iowa,

Calhoun County—ss.

I, A. T. Bowers, do state on oath that I am one of the Trustees duly qualified of Logan Township, Calhoun County, Iowa, that in pursuance of the order of the Board of Township Trustees of said Township made on the 18th day of May 1881, I caused the within notice of Special Election to be published in the Calhoun County Republican a newspaper published in Calhoun County, Iowa, on the 20th day of May 1881, as will more fully appear from the annexed affidavit of H. W. Dudley hereto attached, and that on the 19th day of May 1881, I posted the same in five public places in said township to-wit:

One at the door of the Bowers School House,
One at Wetter's bridge over Purgatory Creek,
One at the door of the Wetter School House,
One at Burch's corner, and
One at the Bowers Bridge over Lake Creek, as required by law.

A. T. BOWERS.

Subscribed and sworn to before me by A. T. Bowers this 1st day of June 1881 as witness my hand and seal.

(Seal)

O. J. JOLLEY,
Notary Public in & for Calhoun
County, Iowa.

Affidavit of Publication:

State of Iowa,

Calhoun County—ss.

I H. W. Dudley, being duly sworn, do depose and say that I am the proprietor of the Calhoun County Republican a weekly newspaper published at Rockwell City, in said County of Calhoun; that the notice hereto attached in said county of Calhoun; that the notice hereto attached was published in said paper on the 20th day of May 1881.

H. W. DUDLEY.

Sworn and subscribed to by H. W. Dudley before me this 21st day of May A. D. 1881.

(L. S.)

O. J. JOLLEY,
Notary Public.

That pursuant to the said notice an election was legally held in said Township on or about the first day of June 1881, and said proposition was adopted and carried by a majority of the votes cast at said election, to-wit: By 26 votes for and 24 votes against said tax aid:

That pursuant to law the Township Officers certified the result of said election to the Auditor of said County by the following certificate, and said tax was duly levied:

"Certificate:

Logan Township,
Calhoun County—ss.

To A. N. Jack, the Auditor of Calhoun County, Iowa:

In pursuance of Chapter 123 of the Laws of the Sixteenth General Assembly of the State of Iowa, as amended, we Rollin Burch Township Clerk of Logan Township, and L. J. Owen, duly appointed as one of the Clerks of a special Election held at the Bowers School House in said Township, on Wednesday the first day of June 1881, do certify to you:

That at such election there was submitted to the electors of said Township the following questions to-wit:

Shall a tax of five per cent be levied in the year 1881 and on the assessment of that year on the real and personal property in said Logan Township which shall be subject to taxation in pursuance of the provisions of Chapter 123 of the laws of the 16th General Assembly as amended, for the purpose of aiding the Des Moines Northwestern Railway Company in extending its railway from the town of Panora, Guthrie County, Iowa, to the north line of Calhoun County, Iowa. One half of the per centum of tax so levied to be collected in 1881, and the other half thereof in 1882. Which tax, when collected is to be paid over to said Railway Company or its assigns, when it shall do the work and construct its railway from Panora, Guthrie County, Iowa, to the north line of Calhoun County, and run its cars thereon; provided such work shall be done along the line of said road and the cars run thereon between the points above mentioned before the first day of September 1882 and provided further, that in no case shall such tax or any part thereof become due and collectible or payable until said road is fully completed between the points last above mentioned and when so completed one half of the per

centum of tax levied shall be due and collectible, and the other half shall be due and collectible the next year.

Provided further that a Depot shall be located and built within a mile of the Center of Logan Township before September first 1882. That such election was duly held in pursuance of a notice of which an exact copy is hereto attached as a part of this certificate, which notice was duly published as required by law.

That at such election there were cast fifty ballots of which twenty-six ballots were for such proposition and tax, and twenty-four ballots were cast against said proposition and tax. That a majority of the ballots cast at such election were cast in favor of such proposition and tax, and that the judges of election after canvassing said ballots, declared said proposition and tax to have been duly carried and adopted, and in pursuance of an order of said judges of election then and there made and the requirements of the law, we do further certify to you:

1. That the rate per centum of tax thus voted in aid of the Des Moines Northwestern Railway at such election was five per cent.
2. That said tax is to be levied in the year 1881, and on the valuation of that year. One half of the per-centum of tax so levied is to be collected in 1881, and the other half thereof in 1882. Provided, however, that in no case shall such tax or any part thereof become due, collectible or payable until the Des Moines Northwestern Railway is fully completed from Panora, Guthrie County, Iowa, to the North line of Calhoun County, Iowa, and when so completed one half of the per centum of tax levied shall be due and collectible, and the other half shall be due and collectible the next year.
3. That said tax, when collected is to be paid over to said railway Company or its assigns, when it shall do the work and construct its railway from Panora, Guthrie County, Iowa, to the north line of Calhoun County, Iowa, and run its cars thereon. Provided such work shall be done along the line of said road and the cars run thereon between the points above mentioned before the first day of September 1882. Provided further that a Depot shall be located and built within a mile of the Center of Logan Township before September first 1882.

In Witness whereof we have hereto set out hands this first day of June 1881.

ROLLIN BURCH,
Township Clerk.
L. J. OWEN,
Clerks of Election.

Twin Lakes Township.

That on the 17th day of November 1880, another special election was held in Twin Lakes Township, Calhoun County Iowa, upon the proposition whether a tax of five per cent on the assessment of 1881, in said township should be voted in aid of the Des Moines Northwestern Railway Company; that the notice of the said election last mentioned was identical with the notice hereinbefore set out in full for the election in Logan Township in said Calhoun County, except that the name of the township was changed to Twin Lakes Township, and the place for the holding of the election was in said Twin Lakes Township.

That at the said election the said proposition was carried by a majority of the votes cast, and that the result of the said election was certified to the Auditors respects, except as to the name of the township, the place of the election, the number of ballots cast, and the names of the persons making the certificate as township officers, as the certificate of election in the said Logan Township, as hereinbefore set out.

Williams Township.

That on the 23rd day of June 1881, another special election was held in Williams Township, Calhoun County, Iowa, upon the proposition whether a tax of five per cent on the assessment of 1881, in said township, should be voted in aid of the Des Moines Northwestern Railway Company; that the notice of the said election last mentioned was identical with the notice hereinbefore set out in full for the election in Logan Township in said Calhoun County, except that the name of the township was changed to Twin Lakes Township, and the place for the holding of the election was different.

That at the said election the said proposition was carried by a majority of the votes cast, and that the result of the said election was certified to the Auditor of Calhoun County, Iowa, by a certificate identical in all respects, except as to the name of the township, the place of the election, the number of ballots cast, and the names of the persons making the certificate as township officers, as the certificate of election in the said Logan Township, as hereinbefore set out.

Butler Township.

That on the 22nd day of June 1881, another special election was held in Butler Township Calhoun County, Iowa, upon the proposition whether a tax of five per cent on the assessment of 1881, in said township, should be voted in aid of the Des Moines Northwestern Railway Company; that the notice of the said election last mentioned was identical with the notice hereinbefore set out in full for the election in Logan Township in said Calhoun County, except that the name of the township was changed to Butler Township, and the place for the holding of the election was different.

That at the said election the said proposition was carried by a majority of the votes cast, and that the result of the said election was duly certified to the Auditor of Calhoun County, Iowa, by a certificate identical in all respects, except as to the name of the township, the place of the election, the number of ballots cast, and the names of the persons making the certificate as township officers, as the certificate of election in the said Logan Township, as hereinbefore set out.

Garfield Township.

That on the 22nd day of June 1881, another special election was held in Garfield Township Calhoun County, Iowa, upon the proposition whether a tax of five per cent on the assessment of 1881, in said township, should be voted in aid of the Des Moines Northwestern Railway Company; that the notice of the said election last mentioned was identical with the notice hereinbefore set out in full for the election in Logan Township in said Calhoun County, except that the name of the township was changed to Butler Township, and the place for the holding of the election was different.

That at the said election the said proposition was carried by a majority of the votes cast, and that the result of the said election was certified to the Auditor of Calhoun County, Iowa, by a certificate identical in all respects, except as to the name of the township, the place of the election, the number of ballots cast, and the names of the persons making the certificate as township officers, as the certificate of election in the said Logan Township, as hereinbefore set out.

That upon the rate or percentage of levy provided by said election proceedings in each of the said Townships of Calhoun County the amount of taxes levied upon the assessment were as follows:

In Logan Township	\$ 5,443.71
In Twin Lakes Township.....	5,541.50
In Williams Township	4,112.46
In Garfield Township	4,489.61

Total\$19,587.28

That of said taxes so voted in said several Townships of Calhoun County there was collected by the County Treasurer and paid over upon the receipt of F. M. Hubbell, the treasurer of the Des Moines Northwestern Railway Company the sum of \$19,587.28.

N. T. GUERNSEY,
Solr. for Defts.

J. C. COOK,
E. R. MASON,
W. H. BLODGETT,
Sols. of Ptf.

In the United States Circuit Court in and for the Southern
District of Iowa, Central Division.

Chicago Milwaukee & St. Paul Railway Company and Wabash
Railroad Company, Plaintiffs,
2449. vs. Equity.

Des Moines Union Railway Company, F. M. Hubbell, F. C.
Hubbell and F. M. Hubbell & Son, Defendants.

Stipulation.

It Is Hereby Stipulated between the parties to the above entitled action that the deposition of E. C. Kinney, of Bozeman, in the County of Gallatin and State of Montana, shall be taken upon oral interrogatories and cross interrogatories before H. A. Bolinger, a Notary Public in and for the County of Gallatin, in said State, on this, the 8th day of January, A. D. 1910, the parties hereto hereby waiving all formalities respecting the service of notice to take the deposition, the time for taking the same and other requirements to make the same admissible in evidence in the above entitled court.

C. S. AUSTIN, JR.,
Attorney for Plaintiffs.

GUERNSEY, PARKER & MILLER,
Attorney for Defendants.

In the United States Circuit Court in and for the Southern
District of Iowa, Central Division.

Chicago Milwaukee & St. Paul Railway Company and Wabash
Railroad Company, Plaintiffs,
2449. vs. Equity.

Des Moines Union Railway Company, F. M. Hubbell, F. C.
Hubbell and F. M. Hubbell & Son, Defendants.

Be It Remembered that pursuant to the stipulation hereto annexed, and on this 8th day of January, 1910, at the home of E. C. Kinney, in Bozeman, in the County of Gallatin and State of Montana, before me H. A. Bolinger, a Notary Public in and for said Gallatin County, duly appointed and commissioned to administer oaths, etc., personally appeared E. C. Kinney, a witness produced on behalf of the plaintiffs in the above entitled action, now pending in the said court, who being first by me duly sworn, was then and there examined and interrogated by C. G. Austin, Jr., of counsel for the said plaintiffs, and by F. W. Lehmann, Jr., of counsel for said defendants, and testified as follows:

EDWARD C. KINNEY being first duly sworn testified as follows:

Direct Examination

By Mr. Austin:

Q. State your name and age.

A. E. C. Kinney, 65 years old in February.

Q. Where do you reside? A. Here in Bozeman, Montana.

Q. State whether or not you were engaged as a construction engineer in the years of 1881 and 1882 by the St. Louis Des Moines & Northern Railway Company?

A. I was.

Q. And do you know who were the officers of that company?

A. Clarkson, Runnels, Polk and Hubbell. I don't remember which man held which office.

Q. Now as part of your duties as construction engineer what did you do Mr. Kinney?

A. I let contracts for the laying out of lines, directed all of the construction, where to do work, and when, and all about it.

Q. Then as I understand you, you were the man in charge of the construction of the St. Louis Des Moines and Northern Railway Company. A. Yes, sir.

Q. Where did that line of railway begin in Des Moines?

A. The east end of it was on the east edge of Fourth Street right by where is the old depot now, or was, south end of the court house, in the first alley south of the court house.

Q. Where did that line extend west and north to?

A. It extended through the city to the west, winding round to Clive, and from Clive to Boone. Northwesternly, pretty near northerly.

Q. Did that line when you originally constructed it extend to Waukee? A. Yes.

Q. When did you finish constructing that line from the city of Des Moines west to Waukee, if you can remember?

A. Well, as near as I can say the latter part of September, sometime along there in the fall.

Q. In the fall of 1881? A. Yes.

Q. And when did you finish constructing the line of railway from Clive to Boone?

A. Well we worked all the next year until August 1882.

Q. What was the character of this road, a narrow gauge or broad gauge road? A. Narrow gauge.

Q. And did this narrow gauge extend from the east line of Fourth Street, as you have testified to Waukee and Boone?

A. Yes, sir.

Q. Did you originally have charge of the laying of the narrow gauge track between the points I have indicated?

A. Yes, sir.

Q. Was there any other track between those points at the time that you constructed the same?

A. No, sir.

Q. Did you build a round house in the city of Des Moines during these years?

A. Yes sir, east of the water plant.

Q. Who did you build that for?

A. St. Louis Des Moines & Northern.

Q. Were there narrow gauge tracks running into this round house? A. Yes, sir.

Q. Do you remember whether or not during the latter part of 1882 a line of track was extended from the Wabash that connected at the depot up to the round house?

A. That is something I do not remember, that might be so.

Q. Now, I call to your attention that portion of the ground just opposite the water works. In constructing your line of track that you have testified about, were you obliged to draw dirt and fill the same in?

A. Yes, sir.

Q. Where did you get the trains to transport this dirt?

A. We had gathered in cars, bought two locomotives, and 20 or 30 more cars.

Q. Where did you get the dirt from?

A. From the south side of the hill, north of the track, about B. F. Allen's house, where Jeff Polk lives.

Q. In the city of Des Moines?

A. Two or three miles west.

Q. Now were there supplies shipped in for the construction of this road? A. Yes.

Q. Who accepted those supplies, who were they billed to.

A. The St. Louis Des Moines & Northern.

Q. Did you have to make out bills during the time that you were working there?

A. I had to make a list of things we needed, so many ties, so many spikes, yes, sir, I made out all of them.

Q. What kind of stationery did you use to make those out?

A. I had some printed right there in town, St. Louis Des Moines & Northern Railway Company heading.

Q. Now in the year 1882 while you were constructing that branch of the road from Clive to Boone, state whether or not you were obliged to rush your work for any reason.

A. We were the latter part because of a bonus of \$75,000 voted by Boone, or the townships, and we had been delayed in getting that big bridge across, so that as soon as we could get across the bridge we had to hurry, and did.

Q. You were obliged to complete the road in order to take advantage of the aid that was voted by the townships in Boone County? A. Yes, sir.

Q. And state whether or not this road connected with the Wabash at East Fourth Street.

A. Yes, sir.

Q. After you completed this line of railway, was the same operated by cars of the St. Louis Des Moines & Northern Railway Company?

A. Yes, sir. We had some few foreign cars. We used our own mostly.

Q. And you left the city of Des Moines in October, 1882?

A. I believe that was the year. I went from there to Texas.

Q. And state whether or not you had knowledge of that line of railroad that you built being operated before you left?

A. It was operated all the time.

Q. And operated by whom?

A. St. Louis Des Moines & Northern.

Q. You were in the engineering business before that?

A. Yes, sir.

Cross-Examination

By Mr. Lehmann:

Q. Whom did you work for?

A. Nickel Plate, Cleveland & Loraine.

Q. When you went to Des Moines what salary did you get?

A. I got \$250 a month.

Q. How was that paid, by check or cash?

A. By check, I guess.

Q. Can you remember what name would be signed to those checks?

Mr. Austin: We object to that question as being incompetent and immaterial.

A. I can't remember.

Q. Who paid you? A. The company.

Q. You don't remember the signature on the check?

A. No, I know it came out of their office.

Q. Was Hubbell's name signed to the checks?

A. I disremember. It was one of them that was treasurer.

Q. Could those checks be signed by Polk and Hubbell?

A. I don't know, I don't think so, they did their business in the form of a company.

Q. Did you ever hear of the Narrow Gauge Railway Construction Company. A. No.

Q. Did you ever work for such a company?

A. No, sir.

Q. Did you ever see that name on a voucher or bill head at or about the time you were working in Des Moines?

A. I don't think I did.

Q. Did you ever hear of the St. Louis Des Moines & Northern Narrow Gauge Railway Construction Company?

A. No, sir.

Q. Nor anything like that? A. No, sir.

Q. Never had anything to do with them?

A. No, sir.

Q. Did you ever work for the Des Moines Northwestern Railway Company? A. Yes.

Q. Where was that?

A. That extended from Penora, a line had been built from Waukee to Penora I connected up with that line.

Q. Mr. Kinney, you run the engineering end of this business, and not the financial end? A. No.

Q. As to the matters of accounts you are not familiar, and never were? A. No.

Q. And what arrangements your employers had you do not know? A. No, sir.

Q. Is that your signature?

A. Yes, sir.

Q. Now, Mr. Kinney, I want you to look at this carefully. It states here, St. Louis Des Moines & Northern Railway Company, The Narrow Gauge Railway Construction Company, contractors, debtor to E. C. Kinney, July 31, 1881, salary for July, \$250, then follows a list of expenses, and this is your signature, and receipt. Received from the Narrow Gauge Railway Construction Company, \$340.83, in full for above account? A. Yes, sir.

Q. You were an engineer, and not an officer in the office?

A. Yes, sir.

Q. You have no idea of the difference between the St. Louis Des Moines & Northern Railway Company, and The Narrow Gauge Construction Company, have you?

A. No.

Q. And yet since you signed this voucher for pay for July, 1881, from the Narrow Gauge Construction Company, you think you must have been working for them then?

A. Yes, I suppose I was.

Q. You do not know whether F. M. Hubbell was president of the Narrow Gauge Construction Company, or not?

A. I do not know.

Q. Mr. Kinney, do you remember making a settlement between G. M. Dodge and the Wabash railway?

A. I don't remember about that.

Q. Do you remember going over the books and lists of expenses that had been incurred in building this road, and finding out what should be charged to Dodge?

A. I don't know, I can't remember.

(Accounts shown Mr. Kinney.)

Q. Do you remember ever going over accounts and certifying them?

A. I don't remember, it might be so, if that is my signature I will have to admit it.

Q. Mr. Kinney, this is all so long ago, and you were not interested in the financial end of the business, but was the engineer, and if you wanted to know anything about this, would you go to the books or trust your memory?

Mr. Austin: We object to that question, it is incompetent and immaterial.

A. I would have to go to the books.

Q. The narrow gauge was built to connect with the Wabash at Fourth Street under an arrangement with the Wabash?

Mr. Austin: We object to that question as being incompetent and immaterial.

A. I don't know.

Q. Have you no idea under what arrangements they did that?

A. I don't think there was any arrangement.

Q. You don't know whether the Wabash had any arrangement with General Dodge, and whether General Dodge had any arrangement with the Narrow Gauge Construction Company?

A. I suppose he had, as he was the man furnishing the money.

Q. You think General Dodge furnished the money to build that road? A. I do.

Q. But General Dodge was not an officer of the St. Louis Des Moines & Northern Railway Company?

A. No, sir.

Q. Did he own stock in it?

A. I don't know.

Q. Did he own stock in the Narrow Gauge Railway Construction Company? A. I don't know.

Q. You think he furnished the money.

A. Yes, sir.

Redirect Examination

By Mr. Austin:

Q. Was Mr. Loweth connected with you in your office at that time?

A. He was in the office, I had him hired.

Recross Examination

By Mr. Lehmann:

I offer into evidence paper marked Exhibit "A", which is a voucher, No. 16, for \$4,194.49, dated August 1, 1881, and especially call attention to that paper attached hereto, which is a voucher from the Narrow Gauge Construction Company to E. C. Kinney for his salary and expenses for July, 1881.

Mr. Austin: We object to the offer made because it is incompetent, immaterial, and not proper foundation having been laid for the same.

Q. Now, Mr. Kinney, you say the signature to that attached voucher is your signature? A. Yes, sir.

State of Montana,

County of Gallatin—ss.

I, H. A. Bolinger, a Notary Public in and for the State of Montana, residing at Bozeman, Montana, do hereby certify that in company with C. G. Austin, Jr., of counsel for the plaintiffs, and F. W. Lehmann, Jr., of counsel for the defendants, in the foregoing entitled cause, I caused the witness E. C. Kinney to come before me, at the residence of said E. C. Kinney, in the city of Bozeman, in said County and State, on the 8th day of January A. D. 1910, between the hours of nine o'clock A. M., and twelve o'clock M., of said day, and after I had administered to said witness an oath in due and proper form to testify to the truth, the whole truth and nothing but the truth, the questions propounded by the said attorneys and the answers of the witness thereto were by Ivah

B. Andrews, an expert stenographer and shorthand writer, taken down in shorthand, and said questions and answers and the testimony of the witness was by said Ivah B. Andrews extended into typewriting, and that after being so extended, the above named counsel for the plaintiffs and defendants, respectively, examined and read said questions and answers, in my presence, and agreed that all of the questions propounded to said witness and the testimony of said witness was as hereinbefore set out, and that said questions and answers as hereinbefore contained are true full and complete, and the signing of said deposition by said witness was waived by the said counsel for said plaintiffs and defendants, respectively.

I further certify that each and all of the exhibits offered or referred to in the testimony of the witness are attached hereto, and returned with this deposition. I hereto attach the affidavit of Ivah B. Andrews as to the correctness of said notes and that the extension thereof is full, true and correct translation of said shorthand notes.

Witness my Hand and Notarial Seal hereto affixed this 17th day of January A. D. 1910.

(Seal)

H. A. BOLINGER,
Notary Public for the State of
Montana, Residing at Bozeman,
Montana.

My commission expires September 14th, 1912.

State of Montana,

County of Gallatin--ss.

I hereby certify that the costs of taking the foregoing deposition have been paid to me by plaintiff in the above entitled case, as follows:

Reducing deposition to writing	
Original 30 f at 20 cents	\$6.00
Copy 30 f at 10 cents	3.00
Swearing witness	.25
Certificate	1.00
Hack fare	1.50
Total	\$11.75

(Seal)

H. A. BOLINGER,
Notary Public for the State of
Montana, Residing at Bozeman,
Montana.

My commission expires September 14th, 1912.

State of Montana,
County of Gallatin—ss.

I, Ivah B. Andrews, of Bozeman, Gallatin County, Montana, being duly sworn, on oath say:

That I am an expert stenographer and shorthand writer that I correctly took down in shorthand and have correctly transcribed the testimony of the witness E. C. Kinney, whose deposition is hereinbefore contained, and I further state that the translation of said notes taken in shorthand as appears in the foregoing deposition is full, true and complete, and that after said notes were translated and the testimony of said witness written, as the same appears in the foregoing deposition, C. G. Austin, Jr., of counsel for the plaintiffs herein, and F. W. Lehmann, Jr., of counsel for the defendants herein, read the testimony of said witness, E. C. Kinney, and both of said counsel agreed that the testimony of said witness taken herein, as hereinbefore contained, was full, true and complete, and was the testimony as said witness gave it.

IVAH B. ANDREWS.

Subscribed in my presence and sworn to before me by the above named Ivah B. Andrews this 17th day of January 1910.

(Seal)

H. A. BOLINGER,
Notary Public for the State of
Montana, Residing at Bozeman,
Montana.

My commission expires Sept. 14th, 1912.

ST LOUIS, DES MOINES & NORTHERN
RAILWAY COMPANYThe Narrow Gauge Railway Construc-
tion Company -- Contractors.Dr. To Stephen Adams,
Sheriff Dallas County, Ia.

1881	Items	Amount
July 28	To amount of finding of Commissioners in the matter of the appraisement of damages caused by the appropriation by said railway company of right of way over S. E. $\frac{1}{4}$ S. W. $\frac{1}{4}$ Sec. 27-79-26 Dallas Co. Ia., owned by Eliz. Kurtz.....	\$ 250.00
" "	To amount of finding of Commissioners in the matter of the appraisement of damages caused by the appropriation by said railway Co. of right of way over S. W. $\frac{1}{4}$ S. E. $\frac{1}{4}$ 27-79-26, owned by L. O. Reinig.....	150.00
" "	To amount of finding of Commissioners in the matter of the appraisement of damages caused by the appropriation of right of way by said railway Co over S. $\frac{1}{2}$ S. W. $\frac{1}{4}$ Sec. 26-79-26, owned by Geo. & E. E. Wright.....	1200.00
" "	To amount of finding of Commissioners in the matter of the appraisement of damages caused by the appropriation of right of way for said railway Co over S. W. $\frac{1}{4}$ S. E. $\frac{1}{4}$ Sec. 26-79-26, owned by D. Morrison.....	150.00
" "	To amount of finding of Commissioners in the matter of the appraisement of damages caused by the appropriation of right of way by said railway Co. over S. E. $\frac{1}{4}$ S. E. $\frac{1}{4}$ Sec. 27-79-26, owned by Edwin Carpenter.....	150.00
" "	To amount of finding of Commissioners in the matter of the appraisement of damages caused by appropriation of right of way by said railway Co. over S. W. $\frac{1}{4}$ S. W. $\frac{1}{4}$ Sec. 25 and S. E. $\frac{1}{4}$ S. E. $\frac{1}{4}$ Sec. 26, both in 79-26, owned by H. J. Carter.....	320.00
" "	To amount of finding of Commissioners in matter of appraisement of damages to S. E. $\frac{1}{4}$ S. W. $\frac{1}{4}$ Sec. 25-79-26, caused by appropriation by said Railway Co of right of way over same, owned by Joseph Carter.....	180.00
	Total.....	\$2400.00

\$2400.00

Received July 28, 1881

From the Narrow Gauge Railway Construction Company

Received July 28, 1881

From the Narrow Gauge Railway Construction Company
the sum of Twenty four Hundred Dollars in full for the above
account.

Approved for payment

Stephen Adams,

Sheriff Dallas County, Iowa.

Duplicate

ST LOUIS, DES MOINES & NORTHERN
RAILWAY COMPANYThe Narrow Gauge Railway Con-
struction Company - - Contractors.Dr. To Stephen Adams,
Sheriff Dallas Co. Iowa

1881	Items	Amount
July 28	To serving notices for appraisement for July 27, 87.....	\$12 00
	To Summoning jury.....	5 00
	To 2 days service with jury.....	3 00
	To fees & mileage of 6 commissioners 2 days.....	36 00
		<hr/> \$56 00

\$56 00 Received July 28, 1881

From the Narrow Gauge Railway Construction Company
the sum of Fifty six dollars in full for the above account.

Stephen Adams,

Sheriff Dalls Co., Iowa.

(copy)

ST LOUIS DES MOINES & NORTHERN
RAILWAY COMPANYThe Narrow Gauge Railway Con-
struction Company - - Contractors

Dr. To E. C. Kinney

1881	Items	Amount
July 31	Salary for July.....	\$250 00
	Railway fare.....	6 08
	Hotel and team expense.....	12 00
	Livery.....	36 75
	Telegrams.....	21 00
	Books, stationery, Pencils &c.....	10 05
	Express.....	1 75
	Postage.....	3 20
		<hr/> \$340 83

Duplicate

\$340 83 Received August 1st, 1881

From the Narrow Gauge Railway Construction Company
the sum of Three Hundred and Forty and 83/100 Dollars
in full for the above account.

Approved

E. C. Kinney,
Chief Engineer.

E. C. Kinney.

ST LOUIS DES MOINES & NORTHERN RAILWAY COMPANY
The Narrow Gauge Railway Construction Company—Contractor
Pay Roll For Chas. F. Loweth and others
For the Month of July 1881

No	Name	Occupation	Time Month days	Rate Per Mo.	Amount	Balance Due	Check No	Witness
1	Chas F. Loweth	Asst Engr	1	\$130.00	\$130.00	\$130.00	1	Chas F. Loweth W. O. Litten
2	Oscar Orrman	Draughtsman	1	100.00	100.00	100.00	2	O. A. Orrman W. O. Litten
3	W. O. Litten	Clerk	25	100.00	80.63	80.63	3	W. O. Litten Fred Lyons
4	Nathan Calvert	Rod Man	1	47.50		47.50	4	Nathan Calvert W. O. Litten

\$358.13

\$358.13

\$358.13

I hereby certify that the persons named above were engaged in the
service of this Company during the period for which time is returned,
and that the rate of Compensation is correct.

Approved Gen'l Sup't Division
Approved General Manager.

Received of the Narrow
Gauge Railway Con-
struction Company the
sum set opposite our
names, in full for servi-
ces as specified

ST LOUIS DES MOINES & NORTHERN RAILWAY COMPANY
The Narrow Gauge Railway Construction Company—Contractor.
Pay Roll for M. E. Nutting's Engr. Corps
For the month of July 1881

Received of the Narrow Gauge Railway Construction Company, the sum set opposite our names, in full for services as specified.												
No	Name	Occupation	Time Month	Days Per Month	Rate Per Day	Amount	Balance Due	Check No.	No.	Witness		
1	M. E. Nutting	Transit Man	1		\$125.00	\$125.00	125.00		1	M. E. Nutting	E. C. Kinney	
2	J. Goldman	Level Man	1		60.00	60.00	60.00		2	J. Goldman	E. C. Kinney	
3	J. M. Rodgers	Head Chainman	1		40.00	40.00	40.00		3	J. M. Rodgers	E. C. Kinney	
4	Fred Lyons	Rod Man		25	30.00	24.25	24.25		4	Fred Lyons	E. C. Kinney	
5	John Horn	Rod man	1		45.00	45.00	45.00		5	John W. Horn	E. C. Kinney	
6	Isac Williams	Axeman	1		30.00	30.00	30.00		6	Isaac Williams	E. C. Kinney	
7	R. A. Breakfield	"	1		30.00	30.00	30.00		7	R. A. Brakefield	E. C. Kinney	
8	Chas Frey	"		7	25.00	6.72	6.72		8	Check attached		
9	Geo. Zimbleman	"		1½		1.50	2.25		9	Check attached		
10	Ward G. Case rear	Flagman	1		20.00	20.00	20.00		10	Ward G. Case	E. C. Kinney	
11	Geo Githens & team		1		4.00	124.00	124.00		11	G. Githens	E. C. Kinney	

\$507.22

I Hereby certify that the persons named above were engaged in the service of this Company during the period for which time is returned and that the rate of Compensation is correct.

Approved, E. C. Kinney, Chf. Engr. Division President.

ST. LOUIS DES MOINES & NORTHERN
RAILWAY COMPANY.

Dr. M. E. Nuttings, Expense.

The Narrow Gauge Railway Construction Co.
Contractors.

Date 1881	Items.	Amount.
July 1,	1 axe, \$1.10, 9 Dinner & horse feed, \$2.70	3.80
" 2,	6 over night and horse feed at Dyars	3.50
	12 Lumber and dinner for self .....	.50
" "	2' to 4' for self	2.25
	Dinner for party and horse feed	1.75
" 8,	2' to 8' bill for seven, St. James	32.00
	" " " horses at C. Halls	6.65
	" " " bill for three, Murphy's	14.75
	Lumber for stakes	1.25
	Dinner for party Swede Point	1.75
	" " One, blankbooks and stationery	1.65
	Lumber for stakes	1.50
	" " One, blankbooks and stationery	1.65
" 9	Dinner for seven, and lumber for stakes	1.50
" 11,	Dinner for seven	1.75
" 13,	12' to 13' Dinner and horse feed	1.80
	Over night Ren & Ike, Swede Point	1.50
" 15,	8' to 15' 76 meals at partmeriters	19.00
	" " " three horses	7.00
	15 meals at Parmeuters, and horse feed	4.75
	8' to 15' 78 meals at Brakefields	19.70
" 16,	Dinner for nine at G. Browns, & horses	2.50
" 20,	16' to 20' bill for horses at C. Halls	4.75
	four men at Murphy's 16' to 20'	16.00
	16' to 20' Four men at St. James	16.50
	16' to 20' H. Chapman on board	2.00
	Dinner and horse feed, Swede Point .....	.70
	Overnight & horse feed at Polk City	1.50
	Eight railroad tickets Boon to Des Moines	12.32
" 21,	One railroad ticket Des Moines to Boon	1.54
	One axe, crossection rods, two tape measures	3.40
	Five papers tacks .....	.25
	Dinner and horse feed for self .....	.60
" 22,	Supper self and horse feed .....	.75
	Breakfast, Dinner & Horse feed	1.00
	Joe Rogers Dinner, Supper Des Moines	1.00
	Breadfast, Dinner & Lodging, Rogers & Ed	2.00
	Dinner & Breakfast for two	1.00
	Board at Des Moines for two days	2.00
" 23,	Two meals at Des Moines .....	.50
	Supper & Horse feed .....	.60
Carried forward		196.76

ST LOUIS, DES MOINES & NORTHERN
RAILWAY COMPANY.The Narrow Gauge Railway Construction
Company—ContractorsDr. To M. E. Nutting's
Expense a/c

1881	Items	Amount.
	Brot ford	\$196.76
July 24	B. D. & S. & horses	1.65
25	Lumber for stakes	7.62
26	4 meals at Neffs	1.00
26	23* to 26* 19 meals	6.50
	2 for dinner	50
	Lumber for stakes	1.50
	23* to 26* 26 meals	6.50
	Bedding & horses	2.50
	2 over night at Babcocks	1.00
	3 for supper at Orins	1.15
	3 tickets Des Moines to Boone	4.62
27	Dinner & horses at Grangers	50
	Supper & horse feed	50
	Over night at Stones	1.25
	Dinner & horse feed at Holcombs	50
	Self & team over night	1.00
	25* to 27 at Milligans 20 meals	5.00
28	Livery at Boone	4.00
	Dinner for self & team	50
29	Repair of chain	50
	Bill at St James, Boone, for 3¼ days f. 3	8.25
	Telegram .....	.25
	4 tickets, Boone to Des Moines	6.16
	Horses	1.50
	Over night with team at Dennys	75
	Dinner for 3 at Davis	75
	" " 1 " "	25
	5 meals at Dennys	1.25
	6 " " Grangers	1.50
	3 " " Stewarts	60
	21st to 22d Ed Hull's bill for board	3.75
30	Dinner for 4 & horses at Stones	1.30
31	30* to 31* Hull & Roghers	2.00
	Chapman to board at home & 1 meal	1.00
	Per bill paid	5.75
	30* to 31* 1 man & team	2.00
	20* to 31* International	8.50
	1 supper	30
	Carried For'd	\$290.91

ST. LOUIS, DES MOINES & NORTHERN
RAILWAY COMPANYThe Narrow Gauge Railway Construction
Company—ContractorsDr. To M. E. Nutting
Expense a/c

1881	Items	Amount
	Brot ford.....	290.91
July 31	Expense Frank Lyons for month July.....	20.25
	R. R. Fare Nathan Calvert.....	90
	Expense J. Goldman 22nd to 31st.....	8.25
		<u>\$320.31</u>

Duplicate

\$320.31. Received August 1st 1881.

From the Narrow Gauge Railway Construction Company, the sum of Three hundred twenty and 31/100 Dollars in full for the above account.

M. E. Nutting.

ST. LOUIS DES MOINES & NORTHERN
RAILWAY COMPANY.The Narrow Gauge Railway Construction
Co.—Contractors.

Dr. To Henry P. Thompson,

Date	Items.	Amount.
1881		
July 1,	To all damages caused to me as Lessee of L. O. Runigs farm being West One-half, Southeast One-fourth, 27, 79, 26, by the taking of right of way through same for above Railway Company.....	12.50

Correct \$12.50, RECEIVED, July 19, 1881,

From the Narrow Gauge Railway Construction Company, the sum of Twelve & 50/100 Dollars, in full for the above account.

H. P. Thompson.

DUPLICATE.

ST. LOUIS DES MOINES & NORTHERN
RAILWAY COMPANY,The Narrow Gauge Railway Construction
Co. Contractors.

Dr. To Iowa State Register

Date	Items	Amount.
1881.		
May 27,	To Printing and Advertising to date as per itemized bill herewith.....	190.50

COPY.

Correct: \$199.50, Received, Des Moines, July 1881,
From the Narrow Gauge Railway
Construction Company, the sum of One
Hundred Ninety Nine & 50/100 Dollars,
in full for the above account.
Clarkson Brothers,

Proprs. Iowa State Register.

R. P. CLARKSON. Register Building, Corner 4th St. and Court Ave.
J. S. CLARKSON.

Des Moines, May 27, 1881.
St. Des. M. & N. R. R.

DUPLICATE.

TO THE IOWA STATE REGISTER, Dr.

Date 1881	Items	Amount.
April 4,	To 500 Dailies, April 3rd	15.00
" 8,	" 100 "	3.00
" 9,	" 25 "	.75
	" 30 Petitions, Boone	2.50
	" 500 Letter Hds.	3.00
	" 250 Envs.	1.75
" 11,	" 500 Dailies	15.00
" 15,	" 100 "	3.00
" 21,	" 500 "	15.00
" 28,	" 500 Dailies	15.00
May 3,	" 300 "	9.00
" 6,	" 10 Certificates Des M. Tp	2.00
" 10	" 10 Certificates, Worth.	2.00
" 10	" 10 Form & Order	2.00
	" 10 "	2.00
	" 5 Poll Books Boone	3.00
	" 5 " " Worth Tp	3.00
	" 500.00 Letter Hds. Engineers	3.00
" 11,	" 500 Dailies	15.00
" 12,	" 80 "	2.40
	" 1000 Vouchers	7.00
" 14,	" Adv. Corporation 6 sqs. D. 4 Sat	15.00
	" 500 checks 10 books	3.25
	" 1000 pay rolls 2 K	11.00
" 17,	" 200 Dailies	6.00
	" 10 certificates Douglass	2.50
	" 10 Form and Order	2.50
	" 5 Poll Books	3.00
May 24,	" 50 Petitions	2.50
	" 500 Envs.	2.25
	" 500 Letter Hds.	2.50
May 27,	" 500 Contracts & Spec	15.00
	" 300 Dailies	9.00
		109.50

ST. LOUIS DES MOINES & NORTHERN

Narrow Gauge Railway Construction Company.

Dr. To the Iowa State Register.

Date	Items.	Amount.
1881		

May 27,	To Printing and advertising to date, as per itemized bill herewith.....	160.50
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DUPLICATE:

Correct:	\$199.50 Received Des Moines July 30 1881 From the St. Louis Des Moines & Northern Narrow Gauge Railway Construction Company the sum of One Hundred Ninety Nine & 50/100 Dollars in full for the above account.
Approved:	

CLARKSON BROTHERS,

Props. Iowa State Register.

ST. LOUIS DES MOINES & NORTHERN RAILWAY COMPANY.

The Narrow Gauge Railway Construction Co. Contractors.

Dr. To G. M. Dodge.

STATEMENT.

Date	Items.	Amount.
1881		

July 30,	Commissioners award Dallas Co. Pd. Stephen Adams, Sheriff.....	2,400.00
	Stephen Adams, Sheriff, fees & expenses July 27th.....	56.00
	H. P. Thompson, Damage to crop on W. 2, S. E. 27, 79, 26.....	12.50
August 1,	E. C. Kinney, July salary & expenses.....	340.83
	Chas. F. Loweth & party for July.....	358.13
	M. E. Nutting, expenses of party, July.....	507.22
	M. E. Nutting " " " ".....	320.31
	State Register printing & advertising to May 27th.....	199.50

Total, see vouchers attached.....	4,194.40
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Complainant's Exhibit No. 80.

Exhibit "Q".

This Indenture, made this Fifteenth day of March, A. D. 1894, by and between Frederick M. Hubbell, individually, and Frederick M. Hubbell & Son, co-partners, all of Des Moines, Iowa, parties of the first part, hereinafter called "The Associates;" the Chicago, Milwaukee & St. Paul Railway Company, a corporation of the State of Wisconsin, authorized to own and operate Railroads in the State of Iowa, party of the second part, hereinafter called "The St. Paul Company," and Roswell Miller, of the City of Chicago, County of Cook and State of Illinois, party of the third part, hereinafter called "The Trustee,"—Witnesseth:

1. That the Des Moines, Northern & Western Railway Company, hereinafter called "the Des Moines Company", owns and operates certain lines of Railroad, aggregating about 150 miles in length, extending, respectively, from Des Moines to Boone, and from Clive to Fonda, all in the State of Iowa; and the St. Paul Company owns and operates an extensive system of Railroads, aggregating about 6,150 miles in length, in Illinois, Iowa and other States, and its Line from Chicago to Council Bluffs intersects and connects with the Lines of the Des Moines Company at Madrid and at Herndon, respectively, and by means of such connections it is able to give to the Des Moines Company a large amount of traffic not otherwise obtainable, and thereby greatly increases the prosperity of said Company.

2. That the Association own Thirty Thousand Shares, out of a total issue of Forty-two Thousand Shares of One Hundred Dollars each, of the Capital Stock of the Des Moines Company, and Two Million and Five Thousand Dollars out of a total issue of Two Million, Seven Hundred and Seventy Thousand Dollars of its First Mortgage Bonds—which Bonds bear interest at the rate of Four per cent per annum up to January 1st, 1897, and thereafter at the rate of Five per cent per annum—and desire that the St. Paul Company shall acquire an interest in said Capital Stock, and enter into close traffic relations with said Des Moines Company, and that the St. Paul Company is willing to acquire such interest and to enter into such traffic relations, on the terms hereinafter set forth; and

3. That in consideration of the premises, and of their mutual and dependent covenants hereinafter contained, the parties hereto have agreed and do hereby agree each with the other, and each with all the others, as follows, to-wit:

First. In consideration of the execution by the St. Paul Company of a certain Traffic Agreement with the Des Moines Company (a copy of which agreement is hereto attached and hereby referred to), the Associates hereby jointly and severally agreed that until any termination of the Traffic Agreement aforesaid, or until the expiration of the option given in Section Three hereof, the Capital Stock of the Des Moines Company shall not, without the written consent of the St. Paul Company, be increased beyond Forty-two Thousand Shares of One Hundred Dollars each, except by the issue of Stock at par in payment for the actual cost of property hereafter to be acquired, and that all said Shares, issued or to be issued, shall have equal rights and preferences.

Second. As a further and additional consideration for the execution by the St. Paul Company of the Traffic Agreement aforesaid, and in consideration of the sum of One Dollar to them in hand paid by said Company, the receipt whereof is hereby acknowledged, the Associates do hereby sell, assign, transfer and set over to the St. Paul Company Sixteen Thousand, Eight Hundred Shares of the Capital Stock of the Des Moines Company, and agree to deposit said Shares at the time, in the manner and for the purposes set forth in Section 7 hereof.

Third. As a further and additional consideration for the execution by the St. Paul Company of the aforesaid Traffic Agreement, and in consideration of the sum of One Dollar to them in hand paid by said Company, the receipt whereof is hereby acknowledged, the said Associates do hereby give and grant unto the St. Paul Company the right and privilege of purchasing from them—and they hereby agree to sell to it, if it elects so to purchase—Six Thousand Four Hundred and Sixty-eight Shares, additional to the Sixteen Thousand, Eight Hundred Shares above mentioned, of the Capital Stock of the Des Moines Company at and for the sum of Forty-six Thousand, Two Hundred Dollars; provided that such right and privilege be exercised by the St. Paul Company on any day after the 1st day of January, 1897, and not later than 12 o'clock noon of the 1st Monday in April in the year 1899, and in the manner hereinafter set forth.

Fourth. And for the consideration first aforesaid, the Associates further agree that the principal of the present Mortgage indebtedness of the Des Moines Company shall not, without the written consent of the St. Paul Company first obtained, be increased, by the issue of additional Bonds, beyond the said Two Million, Seven Hundred and Seventy Thousand Dollars in Bonds now outstanding, except by the issue of bonds at par in payment for the actual cost of property hereafter

acquired, and that none of the bonds so to be issued shall bear interest at a higher rate than four per cent per annum; and that no other or further Mortgage shall, without like consent as aforesaid, be placed on the railway or property of the Des Moines Company. And the Associates also agree to use all lawful and proper means to procure a reduction in the rate of interest on said outstanding bonds, so that said bonds shall, from and after the first day of April, 1897, bear interest at not exceeding four per cent per annum. Provided however, that this Section shall not be construed so as to prevent the Des Moines Company from making a new Mortgage and issuing new bonds thereunder for the purpose of renewing or extending its present Mortgage indebtedness; but provided also, that the new bonds so to be issued shall bear interest at not exceeding Four per cent per annum, and shall not exceed in amount the aggregate of the principal sum of the present outstanding bonds of said Company and the interest thereon which shall have accrued and be unpaid at the time of the issuing of new bonds therefor; and provided further, that said new bonds, or their proceeds, shall be used only for the purposes aforesaid, and that the present outstanding bonds and coupons, exchanged therefor or redeemed thereby, shall be cancelled when and as so exchanged or redeemed.

Fifth. The Associates further agree that if they shall be unable to procure the reduction in interest on said Bonds, as provided in the next preceding Section, then and in such case they will cause proceedings to be instituted to foreclose the Mortgage securing said Bonds, and will use all lawful and proper means to accomplish such foreclosure and sale of the property covered by said Mortgage, and a new Company shall be organized to take over said property, which new Company shall possess and own all the property, rights, privileges and franchise, of every name and description, now belonging to or enjoyed by the Des Moines Company, and shall have a Capital Stock, which shall not exceed the Mortgage indebtedness of said Company more than fifty per cent, divided into shares of One Hundred Dollars each, and a Mortgage debt, bearing not more than Four per cent interest per annum, and not exceeding in amount the principal sum of the present outstanding Bonds of the Des Moines Company, with all just and lawful interest thereon to the date of the organization of said new Company, and all costs and expenses of foreclosure, including costs and expenses incurred by a Receiver or Receivers, if such shall be appointed; and that Fifty-five and Four-tenths (55.4) per cent of said new Stock shall be deposited with the Trustee, as hereinafter provided.

Sixth. And for the consideration first aforesaid, the Associates further agree that the Board of Directors of the

Des Moines Company shall consist of not more than seven members, and at the next Annual meeting of the Stockholders for the election of Directors the St. Paul Company shall be represented in said Board by three persons nominated by it; and in case a new Company is organized to take the place of the Des Moines Company, as contemplated in the next preceding Section hereof, then its Board of Directors shall consist of seven members, and the St. Paul Company shall have the right to nominate three of said members.

Seventh. The Associates further agree that, simultaneously with the execution hereof, they will deposit with the Trustee Twenty-three Thousand, Two Hundred and Sixty-eight Shares of the present outstanding Capital Stock of the Des Moines Company; and if a new Company shall be formed to take the place of said Des Moines Company, then and in such case they will deposit with the said Trustee Fifty-five and Four-tenths per cent of the Shares of the Capital Stock of such new Company, in exchange and substitution for the 23,268 Shares first mentioned; and all of said shares, whether of the Des Moines Company or of the new Company, shall be held by the said Trustee for the following purposes and on the following conditions and trusts, to-wit:

1. That the said Trustee may and shall, at each Annual or other meeting of the Stockholders of the Des Moines Company (or of such new Company, if one be formed) held for the election of Directors, vote for the four persons by the said Associates nominated to him in writing as Directors, and for the three persons who may be by the St. Paul Company nominated to him in like manner and for the like purpose. But in case the Associates shall at any time fail to nominate, then the Trustee may and shall, for and on their behalf, choose as such Directors four suitable persons, not Officers of or connected with the St. Paul Company; and in case the St. Paul Company shall fail so to nominate, then the Trustee shall, for and on its behalf, choose as such Directors the persons who may at that time be the President, Third Vice President and General Manager, respectively, of the St. Paul Company.

2. That said Trustee may and shall, at any Annual or Special meeting of the Stockholders of the Des Moines Company (or of such new Company, if one be formed) vote for such measures as may lawfully be required to be adopted thereat, in order to carry out the provisions of this agreement and of the Traffic Agreement hereto attached; and for such other purposes, not inconsistent with the terms of said agreements, or either of them, as said Associates may from time to time request.

3. That the said Trustee may and shall, on the 15th day of March, 1895, and thereafter on the like day of each year during the continuance of the Traffic Agreement aforesaid (but not exceeding in all five years) transfer and deliver to the St. Paul Company Three Thousand, Three Hundred and Sixty Shares of the Capital Stock of the Des Moines Company; or in lieu thereof, eight per cent of the Shares of the Capital Stock of such new Company, if one be formed—being one-fifth part for each year of the 16,800 Shares of the Stock of the Des Moines Company (or their equivalent in the Stock of the new Company) which the Associates have in and by the Second Section hereof agreed to convey to the St. Paul Company.

4. That the said Trustee may and shall, at any time after the 1st day of January, 1897, and prior to 12 o'clock noon of the first Monday of April, in the year 1899, on the payment of or deposit with him by the St. Paul Company of the sum of Forty-six Thousand, Two Hundred Dollars, for the use and benefit of the Associates, assign, transfer and deliver to said Company all the Shares of the Capital Stock of the Des Moines Company (or of the new Company, if one be formed) then remaining in his hands, anything in the next preceding paragraph hereof to the contrary notwithstanding.

5. That the said Trustee may and shall, at any determination of this agreement, and upon notice thereof signed by the parties hereto, deliver up or pay over any shares of Stock or any money, as the case may be, then in its hands, to the owners thereof, upon receiving proper receipts for the same; and thereupon this Trust shall be discharged.

Eighth. The Associates further agree that they will pay to the Trustee such just and proper compensation for his service, in any matter growing out of this undertaking, as may be agreed upon between themselves and the said Trustee, and that they will hold and save the St. Paul Company free and clear from all claims of the said Trustee for such compensation; and they also agree that if and whenever the said sum of \$46,200 shall be paid to or deposited with the said Trustee by the St. Paul Company, and written notice thereof shall have been served upon Frederick M. Hubbell—one of the said Associates—by depositing the same in the United States Postoffice, addressed to him at Des Moines, Iowa, then and thereafter the said Company shall be in no wise liable for the misapplication or non-application of the money so by it paid or deposited, and all the rights and interests of said paid or deposited, and that all the rights and interests of said Associates, to and in any and all of the Capital Stock deposited with the Trustee as aforesaid, shall wholly cease and deter-

mine when such payment or deposit is made; and thereupon they will, when thereto requested by the St. Paul Company, cause a meeting of the Board of Directors of the Des Moines Company, or of the new Company, as the case may be, to convene, and their representatives in said Board to resign, one by one, and to elect in their places such persons as may be thereto nominated by the St. Paul Company.

Ninth. In consideration of the agreement of the Associates, to pay him a just and proper compensation for his services therein, the Trustee hereby accepts the trust aforesaid, and agrees to faithfully perform all the acts and discharge all the duties mentioned and set out in the Seventh Section of this Indenture, when and as the same may be required of it.

Tenth. In consideration of the performance by the parties thereto of their respective covenants hereinabove set forth, faithfully and within the time and times limited therefor, the St. Paul Company hereby agrees that it will enter into and execute the aforesaid Traffic Agreement with the Des Moines Company, and that in case a new Company is formed to take the place of the Des Moines Company, within the time and upon the terms for that purpose hereinabove mentioned and set forth, it will make a Traffic Agreement with said new Company for the then unexpired term of the Traffic Contract aforesaid, and upon the terms and conditions therein contained; but the St. Paul Company expressly reserves to itself the right to terminate this Indenture and the aforesaid Traffic Agreement with the Des Moines Company, without notice, on the second day of April, 1897, if at that time the Associates have failed to perform their covenants hereinbefore contained, or if the Mortgage Bonds of the Des Moines Company then bear interest at a higher rate than Four per cent per annum, or if the property of said Company has not then been acquired by a new Company formed as hereinabove contemplated.

Eleventh: The St. Paul Company further agrees that if and whenever it shall in any manner acquire the absolute ownership of Fifty-one per cent in amount of the Capital Stock of the Des Moines Company, or of the new Company, if one be formed as aforesaid, then the Traffic Contract hereinabove mentioned and referred to shall remain in full force until the 15th day of March, A. D. 1904, anything herein contained to the contrary notwithstanding.

Twelfth. It is mutually understood and agreed by and between the Associates and the St. Paul Company, that if

the Associates shall faithfully endeavor to perform the obligations by them assumed, in the Fifth Article hereof, but nevertheless fail to perform the same, they shall not be liable in damages to the St. Paul Company by reason of such failure; Provided however, that nothing in this 12th Section contained shall be construed so as to limit or abridge in any manner the rights and privileges reserved to itself by the St. Paul Company in the 10th Section hereof.

Thirteenth. It is further mutually understood and agreed by and between the Associates and the St. Paul Company that if at any time a difference of opinion shall arise between them in respect to the rights and duties of either of them under this Indenture, the question in dispute shall be referred to a Board of Arbitrators, consisting of three competent, disinterested persons, one to be chosen by the Associates, one by the St. Paul Company, and the two so chosen to choose a third. The party desiring such arbitration shall give written notice of the same to the other party, setting forth therein definitely the points in dispute, and naming the person selected by such party to act as arbitrator. If the party on whom such notice is served shall for fifteen days thereafter neglect to name a person to act as arbitrator, then the party giving such notice shall name a second arbitrator, and the two so chosen shall choose a third. The Board of Arbitrators so chosen shall immediately proceed to hear and determine all matters submitted to them, after giving to each party not less than five days notice of the time and place of meeting, and at the time and place appointed shall proceed summarily to hear and dispose of the matter in dispute, unless, in their judgment, the hearing should be postponed to a later day or days, of which adjourned meeting like notice shall be given, unless such notice shall be waived by both parties, in which case the hearing may proceed at an earlier date. The determination of such Board of Arbitrators, or of a majority of them, as to any matter so submitted to them shall be absolute, final and conclusive upon the parties hereto, and such parties shall abide by such decision and perform the conditions thereof as if the same were made a part of this Indenture.

Lastly. It is mutually understood and agreed by and between all the parties hereto that at any termination of this agreement each party shall be released from all obligation or liability to the others, except for the payment or delivery of any balances of money or shares of stock then due under the terms of this agreement.

In Witness Whereof, the Associates and the Trustee have hereunto set their hands and seals, and the St. Paul Company has caused these presents to be executed by its President, thereto duly authorized, and its corporate seal to be hereto affixed and properly attested, the day and year first above written.

FREDERICK M. HUBBELL, (Seal)

FREDERICK M. HUBBELL & SON. (Seal)

(Seal) CHICAGO, MILWAUKEE & ST. PAUL RAILWAY CO.

Attest:

F. M. Myers,
Secretary.

Rosewell Miller,
Trustee.

By Rosewell Miller,
President.

(Seal)

Stipulation of Counsel.

In the Circuit Court of the United States for the Southern District of Iowa, Central Division.

THE CHICAGO, MILWAUKEE AND ST. PAUL RAILWAY COMPANY and
The Wabash Railroad Company, Plaintiffs,

VS.

THE DES MOINES UNION RAILWAY COMPANY, FREDERICK M. HUBBELL, Frederick C. Hubbell and F. M. Hubbell, & Son, Defendants.

Stipulation of Counsel Respecting the Admission of Copies of Certain Documentary Evidence on the Part of the Plaintiffs.

It is hereby stipulated between Counsel for the Complainants and defendants in the above entitled cause, that copies of the contracts, deeds and documents, a list of which is hereto attached, may be offered and admitted in evidence in said cause, on the part of the complainants, subject, however, to every objection that might be made or urged against the originals.

It being the intention that said copies shall be given the same effect as evidence as would be given to the originals of said contracts, deeds and documents.

Said copies shall be designated as "Complainants' Exhibits" and shall be numbered from No. 80 to No. 93 inclusive, each of said exhibits being identified by the initials of Counsel.

A list of said contracts, deeds and documents is as follows:

Complainants' Exhibit No. 80 Copy of contract between the Des Moines & St. Louis Railroad Company, and James F. How, dated February 18, 1881, respecting the construction of the Des Moines & St. Louis Railroad.

Complainants' Exhibit No. 82 Deed of F. M. Hubbell to James F. How, Trustee, dated March 23rd, 1881.

Complainants' Exhibit No. 83. Declaration of Trust executed by Geoffrey O'Hara, dated March 12th, 1881.

Complainants' Exhibit No. 84. Deed from Geoffrey O'Hara to James F. How, Trustee, dated September 13th, 1881.

Complainants' Exhibit No. 85. Deed of Henry A. Gardner and wife, to James F. How, Trustee, dated February 23rd, 1881.

Complainants' Exhibit No. 86. Deed of Annie Savery and Husband to James F. How, Trustee, dated June 1st, 1882.

Complainants' Exhibit No. 87. Deed of Hoyt Sherman, assignee, to James F. How, Trustee, dated November 26th, 1883.

Complainants' Exhibit No. 88. Deed of Edward Dennis, Mary Dennis and Friederika Dennis to James F. How, Trustee, dated July 25, 1883.

Complainants' Exhibit No. 89. Deed of Ewing, Jewett & Chandler to James F. How, Trustee, acknowledged November 20th, 1883.

Complainants' Exhibit No. 90. Deed of Maria McCauly and husband to James F. How, Trustee, dated August 8th, 1884.

Complainants' Exhibit No. 91. Deed of William Dwyer and wife to James F. How, Trustee, dated August 5th, 1884.

Complainants' Exhibit No. 92. Deed of Wells H. Blodgett and wife to James F. How, Trustee, dated February 20th, 1885.

Complainants' Exhibit No. 93. Declaration of Trust executed by Frederick M. Hubbell, March 11, 1881 in favor of Des Moines & St. Louis Railroad Company and Des Moines Northwestern Railway Company.

It is further stipulated that the contract entered into January 2nd, 1882, between the Des Moines and St. Louis Railroad Company, the Des Moines Northwestern Railway Company; the St. Louis, Des Moines and Northern Railway Company, G. M. Dodge, James F. How and James F. How, Trustee, and consented to by the Wabash, St. Louis & Pacific Railway Company, which contract is designated as "Exhibit A" to the Amended Bill of Complaint herein, was filed for record in the office of the Recorder of Deeds for Polk County, Iowa, on the 28th day of September, 1886.

WELLS H. BLODGETT,

J. C. COOK,

Counsel for Plaintiffs.

GUERNSEY, PARKER & MILLER,

Counsel for Defendants.

COMPLAINANTS' EXHIBIT No. 80.

Contract, Dated February 18th, 1881, Between J. F. How and Des Moines and St. Louis Railroad Co. for Construction of Road.

This Agreement, made this — day of February, 1881, by and between the Des Moines and St. Louis Railroad Company, a corporation organized under and in accordance with the laws of the State of Iowa, party of the first part and James F. How, of St. Louis, State of Missouri, party of the second part, Witnesseth:

Whereas, J. S. Polk, J. S. Clarkson, F. M. Hubbell and J. S. Runnells did on the 8th day of December, 1880, enter into an agreement with the Wabash, St. Louis & Pacific Railway Company to incorporate themselves under the laws of Iowa as a railroad corporation with a capital stock of two millions of Dollars and authorized to construct a railroad from Des Moines, Iowa, to Albia in said State and in accordance with such agreement they have duly organized themselves into a corporation by the name and style of the Des Moines and St. Louis Railroad Company, with the power and for the purpose contemplated in said agreement, which agreement, in so far as the same may be applicable is hereby referred to and made a part hereof.

Now Therefore, the said second party, being the person designated under said agreement by the Wabash, St. Louis & Pacific Railway Company for the consideration hereinafter expressed, hereby agrees to subscribe to the entire capital stock of the first party, with the exception of four shares as hereinafter provided, and agrees that he will, with all reasonable dispatch, locate, provide right of way and grounds for, construct, complete and reasonably equip the railroad aforesaid, from Des Moines, Iowa, to a connection with the railroad of the Wabash, St. Louis & Pacific Railway Company at Albia, Iowa, all of which location and construction shall be done to the approval of the said Wabash, St. Louis & Pacific Railway Company. All expenses of surveys and other expenses made by said first party up to the date of this contract, and all contracts for ties entered into by it, are hereby assumed by the second party. And the second party further agrees, accordance with said agreement of December 8th, to pay to said J. S. Polk, J. S. Clarkson, F. M. Hubbell, and J. S. Runnells, as compensation for their services as officers and agents of the said first party, and in procuring subsidies and other aid, from the execution of said contract of December 8th, to the time of the completion of said railroad the sum of ten thousand dollars in money, and the further sum of five per cent of the amount of all of said subsidies which shall be actually paid and five per cent of the value of all lands donated for right of way or station purposes, and five per cent of the value of all other aid to the construction of the railroad of said first party which may be expressly accepted by the second

party. In the event that more ground is donated in consideration of the location of a station at any point than is required upon a liberal construction for those purposes the surplus shall belong absolutely to the said J. S. Polk, J. S. Clarkson, F. M. Hubbell and J. S. Runnells. The value of property donated for right of way shall be estimated at four thousand four hundred dollars per mile. The said sum of ten thousand dollars shall be paid on the completion of the first five miles of said railroad and the commission of five per cent on the completion of said railroad.

It is expressly understood that the expenses of the parties above named, as officers and directors of the said first party hereto, and while personally engaged in procuring subsidies or right of way, and their office and clerical expenses, and the legal expenses of said first party for condemnation and other proceedings shall be defrayed from funds of said first party and not at their personal cost and shall be deducted from the amount due the second party under this contract.

In consideration of said agreements by the second party hereto, and in the payment for such location, right of way, construction and equipment of said railroad the first party agrees to issue to the second party the entire amount of its capital stock, with the exception of four shares, by him subscribed as above, and in addition thereto to deliver to him for each mile of said railroad fifteen thousand dollars in bonds of the Wabash, St. Louis & Pacific Railway Company, of the issue secured by its General Mortgage, and further secured by special mortgage on the railroad and equipments of the said first party, and all appurtenances thereto. As fast as each section of five miles of said railroad is completed there shall be issued to said second party the entire amount of fifteen thousand dollars per mile of said bonds and one hundred and twenty-five thousand dollars of said capital stock the remainder of said capital stock to be issued and delivered when this contract of subscription is completely performed by said second party.

In addition to the payment above set forth the first party shall transfer to the second party all sums of money, or monied obligations which said first party may receive in consideration of the construction of said railroad from persons or private and municipal corporations, not reserved by said agreement of December 8th aforesaid to said Polk, Clarkson, Hubbell and Runnells, and so much of the capital stock of the first party as the laws of Iowa may require said first party to transfer to persons or corporations in consideration of such local aid shall be by it so transferred and deducted from the amount of said capital stock otherwise payable to the said second party.

In Witness Whereof, the parties hereto have, this 18th day of February 1881, signed the same and the party of the first part has caused its corporate seal to be affixed thereto,

DES MOINES & ST. LOUIS R. R. CO.
 (Signed) By J. S. CLARKSON,
President,
 (Signed) JAMES F. HOW,

[SEAL.] Attest:

F. M. HUBBELL,
Secretary.

O. K.

GUERNSEY, PARKER & MILLER,

WELLS H. BLODGETT.

COMPLAINANT'S EXHIBIT No. 82.

Deed of F. M. Hubbell and Wife to James F. How, Trustee.

F. M. Hubbell & Wife

to

James F. How, Trustee.

Filed for Record and entered for taxation the 23rd day of March A. D., 1881 at 5:45 o'clock p. m.

J. J. PAYNE,
Recorder,

By W. E. ROWLAND,
Deputy.

Know All Men By These Presents: That I, F. M. Hubbell of Polk County and State of Iowa, in consideration of the sum of Two Thousand & Sixty-Two & 50/100 Dollars, in hand paid do hereby sell and convey unto James F. How, Trustee of St. Louis County and State of Missouri, the following described premises, to-wit, and State of Iowa, to-wit:

Lots No. Twelve & Thirteen in Block Eleven, Lots No. Ten and Eleven Block No. twelve—Lot No. Sixteen in Block No. Thirteen, Lot No. Seven in Block No. Sixteen Lot No. Nine in Block No. Twenty-one, all in the Town of Des Moines, now lying in and forming a part of the City of Des Moines.

And I do hereby covenant to Warrant and Defend the said premises against the lawful claims of all persons whomsoever claiming by, through or under us. And the said Frances E. Hubbell, wife of F. M. Hubbell hereby relinquishes all her right of dower in and to the above described premises.

Signed this 23rd day of March A. D. 1881.

F. M. HUBBELL,
FRANCES E. HUBBELL.

In presence of ————.

STATE OF IOWA,

Polk County, ss:

On this 23rd day of March A. D. 1881, before me C. Huttenlocker a Notary Public, in and for said County, personally came F. M. Hubbell and Frances E. Hubbell personally to me known to be the identical persons whose names are affixed to the above instrument as grantors and acknowledged the same to be their voluntary act and deed for the purposes therein expressed.

Witness my hand and Notarial Seal on the date last above written.
[NOTARIAL SEAL.]

C. HUTTENLOCKER,
Notary Public, Polk Co.

STATE OF IOWA,

Polk County, ss:

I, Mrs. Frank W. Dodson, Recorder of said County, hereby certify that the foregoing writing is a copy from the original record in my office, and of the whole thereof, and recorded in book #101, page 119.

Dated at Des Moines, Iowa, in said County, this the 3rd day of September, 1912.

MRS. FRANK W. DODSON,
Recorder.

O. K.

GUERNSEY, PARKER & MILLER.

" "

WELLS H. BLODGETT.

COMPLAINANTS' EXHIBIT No. 83.

Declaration of Trust of Geoffrey O'Hara.

As holder of the legal title to lot number eight (8), block thirteen (13), in the City of Des Moines, Iowa, I hereby certify and acknowledge that I hold the same as Trustee for the Walash, St.

Louis and Pacific Railway Company, the lot in question having been purchased by that Company as an appurtenant railroad to the Des Moines and St. Louis Railroad Company under the contract between the said two Companies for the construction of the railroad from Des Moines to Albia in the State of Iowa.

Witness my hand this 12th day of March A. D. 1881.

GEOFFREY O'HARA.

STATE OF NEW YORK,

City and County of New York, ss:

On this twelfth day of March, A. D. 1881, before me undersigned, a duly appointed Notary Public for the State of New York, personally appeared Geoffrey O'Hara, to me known to be the same person described in and who executed *and* foregoing certificate, and acknowledged that he executed the same for the uses and purposes therein mentioned.

Witness my hand and Notarial Seal at the City of New York, the day and year aforesaid.

[NOTARIAL SEAL.]

WM. J. HARDING,
*Notary Public, Kings County,
State of New York.*

Cert. filed in New York County.

O. K.

GUERNSEY PARKER AND MILLER.

" "

WELLS H. BLOMGETT.

COMPLAINANT'S EXHIBIT NO. 84.

Deed of Geoffrey O'Hara to James F. How, Trustee.

Geoffrey O'Hara

to

James F. How, Trustee.

This Indenture, made on the 13th day of September A. D. 1881, by and between Geoffrey O'Hara of the City of New York, State of New York party of the first part, and James F. How, Trustee of the City of St. Louis, in the State of Missouri, party of the second part: Witnesseth, That the said party of the first part in consideration of the sum of One Dollar, to me paid by the said party of the second part, the receipt of which is hereby acknowledged, do, by these presents, grant, bargain, and sell, convey and confirm, unto

the said party of the second part, his heirs and assigns, the following described Lots, Tracts or parcels of land, lying, being and situate in the County of Polk and State of Iowa, to-wit:

All of Lot Number Eight (8) in Block thirteen (13) Town of DeMoine in said County of Polk and State of Iowa as the same appears upon the plat of said town now on file in the office of the Recorder of Deeds of said County.

To Have And To Hold, the premises aforesaid, with all and singular the rights, privileges, appurtenances and immunities thereto belonging, or in anywise appertaining, unto the said party of the second part, and unto his heirs and assigns forever; the said — hereby certifying that the said premises are free and clear of any encumbrance done or suffered by him or those under whom he claims; and that he will Warrant and Defend the title to the said premises unto the said party of the second part and to his heirs and assigns forever against the lawful claims and demands of all persons claiming under, by or through said grantor, but against no other person or persons whomsoever.

In Witness Whereof, the said party of the first part has hereunto set his hand and seal the day and year first above written.

[SEAL.]

G. O'HARA.

Signed, sealed and delivered in presence of
JOSEPH DICKSON.

STATE OF NEW YORK,

County of New York, ss:

Be it Remembered, that on this 13th day of September A. D. 1881, before the undersigned, a Notary Public within and for the County and State aforesaid personally came Godfrey O'Hara who is personally known to me to be the same person whose name is subscribed to the foregoing instrument of writing, as a party thereto, and acknowledged the same to be his act and deed for the purposes therein mentioned. And the said Godfrey O'Hara further declared himself to be single and unmarried.

In Testimony Whereof, I have hereunto set my hand and affixed my official seal, at my office in New York the day and year first above written. My term of office as a Notary Public expires on the 30th day of March 1883.

[NOTARIAL SEAL.]

WM. J. HARDING,
Notary Public, Kings County,
State of New York.

Certificate filed in New York County.

Filed Oct. 10, 1881, 2 30 p. m. J. J. Payne, Recorder.

STATE OF IOWA,
Polk County, ss:

I, Mrs. Frank W. Dodson, Recorder of said County, hereby certify that the foregoing writing is a copy from the original record in my office, and of the whole thereof, and recorded in Book 94, page 535.

Dated at Des Moines, Iowa, in said County, this the 21st day of October, 1912.

Mrs. FRANK W. DODSON,
Recorder.

O. K.

GUERNSEY, PARKER & MILLER,
WELLS H. BLOMGETT.

COMPLAINANTS' EXHIBIT No. 85.

Deed of Henry A. Gardner and Wife to James F. How, Trustee.

Henry A. Gardner and Wife

to

James F. How, Trustee, &c.

Known all men by these Presents That Henry A. Gardner and Deborah C. Gardner, his wife, of Cook County and State of Illinois, in consideration of the sum of Two Thousand Dollars in hand paid by James F. How, Trustee of the Des Moines and St. Louis Railway Company, and the Des Moines and Northwestern Railway Company, of St. Louis County and State of Missouri, do hereby sell and convey to the said James F. How as Trustee of the Des Moines and St. Louis Railway Company and the Des Moines and Northwestern Railway Company the following described premises, situated in the County of Polk and State of Iowa, to-wit:

Lot number Three (3) in block Twenty Two (22) in Hoxies Addition to the Town of Fort Des Moines, the same being within the corporate limits of the City of Des Moines.

And I hereby covenant with the said James F. How, Trustee as aforesaid, that I hold said premises by good and perfect title; that I have good right and lawful authority to sell and convey the same; that they are free and clear of all liens and incumbrances whatsoever, except a mortgage of \$550.00 to M. H. Stanton due April 1, 1881, bearing 9% interest, which said incumbrance said James F. How as Trustee assumes to pay; and I covenant to warrant and defend the said premises against the lawful claims of all persons whomsoever; except the aforesaid mortgage.

And the said Deborah C. Gardner hereby relinquishes her right of dower in and to the above described premises.

Signed this 23rd day of February A. D. 1881.

HENRY A. GARDNER,
DEBORAH C. GARDNER.

STATE OF ILLINOIS,
County of Cook, ss:

On the 22nd day of March A. D. 1881, before me a Notary Public within and for said County, personally came Henry A. Gardner and Deborah C. Gardner his wife, personally known to me to be the identical persons whose names are affixed to the above instrument as grantors and severally acknowledged the execution of the same to be their voluntary act and deed for the purposes therein expressed.

In Testimony Whereof, I have hereunto subscribed my name and affixed my official seal at Chicago on the date last above written.

[NOTARIAL SEAL.]

FRANK YOUNG.

Filed April 22nd, 1881, at 2 $\frac{3}{4}$ o'clock P. M.

J. J. PAYNE,
Recorder.

STATE OF IOWA,
Polk County, ss:

I, Mrs. Frank W. Dodson, Recorder of said County, hereby certify that the foregoing writing is a copy from the original record in my office, and of the whole thereof, and recorded in book 94, Page 287.

Dated at Des Moines, Iowa, in said County, this 12th day of September, A. D. 1912.

MRS. FRANK W. DODSON,
Recorder.

O. K.

GUERNSEY, PARKER & MILLER,
WELLS H. BLODGETT.

COMPLAINANTS' EXHIBIT No. 86.

Deed of Annie Savery and Husband to James F. How, Trustee.

Annie Savery & Husband

to

James F. How, Trustee,

Filed for Record and entered for Taxation the 30th day of Nov.
A. D. 1883 at 11:45 o'clock A. M.

J. J. PAYNE,

*Recorder.**Deputy.*

Know All Men By These Presents: That we, Annie Savery & J. C. Savery, her husband, of Polk County, and State of Iowa, in consideration of the sum of Two Thousand Nine Hundred and Fifty Dollars (\$2950.00) in hand paid by James F. How, Trustee, of County of and State of do hereby Sell and Convey unto the said James F. How, Trustee, the following described premises situated in the County of Polk and State of Iowa, to-wit:

A strip of land Fifty (50) feet in width on the North of and adjoining the right of way of the Chicago Rock Island and Pacific Railroad in lot Number Two (2) of the Official Plat of the Northwest quarter of the Northeast quarter of Section Eight (8) in Township Seventy-Eight (78) North, Range Twenty-four (24) West of the Fifth P. M. Iowa, this conveyance of said Real estate being made in lieu and to take the place of land bought to be condemned by the Des Moines & St. Louis Railroad Company for right of way through the aforesaid official Plat Lot.

And we hereby covenant with the said James F. How, Trustee, that we hold said premises by good and perfect title; that we have good right and lawful authority to sell and convey the same; that they are free and clear of all liens and incumbrances whatsoever.

And we covenant to Warrant And Defend the said premises against the lawful claims of all persons whomsoever.

And the said J. C. Savery hereby relinquishes his right of dower in and to the above described premises.

Signed the First day of June, A. D. 1882.

ANNIE SAVERY,

J. C. SAVERY.

In presence of

STATE OF IOWA,

Polk County ss:

On the second day of June A. D. 1882, before me W. O. Curtiss, a Notary Public within and for said County, personally came Annie Savery and James C. Savery, her husband, personally to me known to be the identical persons whose names are affixed to the above instrument as grantors, and severally acknowledged the execution of the same to be their voluntary act and deed for the purposes therein expressed.

In Testimony Whereof, I have hereunto subscribed my name and affixed my official seal at Des Moines, Iowa, on the date last above written.

[NOTARIAL SEAL.]

W. O. CURTISS,
Notary Public, Polk Co., Iowa.

STATE OF IOWA,

Polk County, ss:

I, Mrs. Frank W. Dodson, Recorder of said County, hereby certify that the foregoing writing is a copy from the original record in my office, and of the whole thereof, and recorded in Book 141, page 15.

Dated at Des Moines, Iowa, in said County, this the 12th day of September A. D. 1912.

MRS. FRANK W. DODSON,
Recorder.

O. K.

GUERNSEY, PARKER & MILLER,
WELLS H. BLODGETT.

COMPLAINANTS' EXHIBIT No. 87.

Deed of Hoyt Sherman to James F. How, Trustee.

Hoyt Sherman, Assignee,

to

James F. How, Trustee.

Know All Men By These Presents: That whereas, on the 23rd day of February 1875, a petition in Bankruptcy was filed in the United States District Court for the District of Iowa against Benjamin F. Allen, asking that he be adjudged a Bankrupt; and whereas on the 22nd day of April 1875, said Benjamin F. Allen was adjudicated

a Bankrupt by the said District Court for the District of Iowa, and on the 1st day of July, 1875, the undersigned was elected assignee of his Estate and that on the 12th day of July, 1875, the honorable J. M. Love Judge of the United States District Court for said District executed in due and proper form a deed of assignment to the undersigned of all estate real and personal of the said Benjamin F. Allen, Bankrupt, and whereas, on the 25th day of July 1881, a Sheriff's jury of Polk County condemned the following described tract of land as a right of way for the St. Louis, Des Moines & Northern Railway Company for the consideration named herein and whereas, the United States District Court for the District of Iowa, by an order dated November 11th, 1882, ordered and directed the undersigned Assignee to convey said tract to said Railway Company for the consideration and subject to the conditions therein named. Now, therefore, in consideration of the payment of Twenty three hundred and Seventy three 33/100 Dollars, by James F. How, Trustee of St. Louis in the State of Missouri, I, Hoyt Sherman, Assignee, do hereby Sell and Convey unto the said James F. How, Trustee, the following described real estate situate in the County of Polk and State of Iowa, viz: Beginning at a point on the Section line Eighteen Hundred and Eighty-three (1883) feet South of Northwest corner of Section No. Eight in Township No. Seventy-eight (78) North Range Twenty-four (24) West; thence North $61\frac{1}{2}^{\circ}$ East on a line parallel to and fifty (50) feet from the Center line of the St. Louis Des Moines and Northern R. R. track as now constructed Five Hundred and Seventy-eight (578) feet; thence North $64\frac{1}{2}^{\circ}$ East Eight hundred (800) feet; thence North 58° East Eight Hundred and Seventy two (872) feet to the East line of Lot No. Four (4) of the Official Plat of the Northwest quarter of said Section No. Eight (8); thence South along said line One Hundred Twenty-five feet (125) to the North line of the right of way of the C. R. I. & P. R. R. Co. thence South 55° West along said right of way line (which is 50 feet from Center of track) Twenty-three hundred and thirty (2330) feet to Section line; thence North along the Section line Three Hundred Fifteen (315) to the place of beginning, and the said Hoyt Sherman, Assignee, so far as he may legally do in his representative capacity, covenants for the estate of B. F. Allen, Bankrupt, to Warrant and Defend the title against the lawful claims of all persons whomsoever. Signed this 26th day of November, 1883.

HOYT SHERMAN,

Assignee.

STATE OF IOWA,

Polk County, ss:

On this 19th day of December 1883, before me a Notary Public in and for said County in person appeared Hoyt Sherman, personally known to me to be the identical person who executed the foregoing conveyance as assignee, and acknowledged the same to be his voluntary act and deed in his capacity as above stated.

Witness my hand and Notarial Seal the date above written,
[NOTARIAL SEAL.]

CYRUS KIRK,
Notary Public.

This Deed of Conveyance made by virtue of an order of Court, dated November 11, 1882, is hereby confirmed and approved,
Dec. 19, 1883,

JOHN MITCHELL,
Register.

Filed Dec. 24th, A. D. at 10:55 o'clock A. M.

J. J. PAYNE,
Recorder.

STATE OF IOWA,
Polk County, ss.:

I, Mrs. Frank W. Dodson, Recorder of said County, hereby certify that the foregoing writing is a copy from the original record in my office, and of the whole thereof, and recorded in Book 138, page 13.

Dated at Des Moines, Iowa, in said County, this the 12th day of September 1912,

Mrs. FRANK W. DODSON,
Recorder.

O. K.
" " GUERNSEY, PARKER & MILLER.
" " WELLS H. BLODGETT.

COMPLAINANTS' EXHIBIT No. 88.

Deed of Edward Dennis to James F. How, Trustee.

Edward Dennis et al,

to

James F. How, Trustee.

Filed for Record and entered for Taxation the 30th day of Nov.
A. D. 1883, at 11:45 o'clock A. M.

J. J. PAYNE,
Recorder.

Deputy.

Know All Men By These Presents: That we, Frederick Dennis, Widow, and Edward Dennis and Mary Dennis, his wife, and sole surviving heirs at law and *legoties* of Laurent Dennis deceased and late of Polk County, and State of Iowa, in consideration of the sum of Twelve Hundred (1200) Dollars, in hand paid by James F.

How, Trustee of County and State of do hereby Sell and Convey unto the said James F. How, Trustee, the following described premises situated in Polk County, State of Iowa, to-wit:

Lot No. five (5) Block "D" of Scott and Dean's Addition to Fort Des Moines and now included within and forming a part of the City of Des Moines, Iowa, and for the same consideration we also release to said Trustee and the Railroad Company which he represents all damage to Lot No. four (4) in the same Block by reason of any change of grade which has been made or may hereafter be made in the management and operation of such Road.

And we hereby covenant with the said James F. How, Trustee that we hold said premises by good and perfect title; that we have good right and lawful authority to sell and convey the same; and that they are free and clear of all liens and incumbrances whatsoever.

And we hereby covenant to Warrant and Defend the said premises against the lawful claims of all persons whomsoever.

And Mary Dennis Wife of Edward Dennis, hereby relinquishes her right of dower in and to the above described premises.

Signed this 25th day of July A. D. 1883.

EDWARD DENNIS.

MARY DENNIS.

FREDERICK DENNIS (in foreign).

STATE OF LOUISIANA,

City of New Orleans, ss:

On this Fourth day of September A. D. 1883, before me Edward A. Peyroux a Notary Public within and for said County, personally came Edward Dennis and Mary Dennis, husband & wife and personally to me known to be the identical persons whose names are affixed to the above instrument as grantors, and acknowledged the same to be their voluntary act and deed for the purposes therein expressed.

In Testimony Whereof, I have hereunto subscribed my name and affixed my official seal at the City of New Orleans, La., on the date last above written.

[NOTARIAL SEAL.]

E. A. PEYROUX,

Not. Pub.

STATE OF IOWA,

Polk County, ss:

On this 2nd day of October A. D. 1883, before me, Ezra K. Failor, a Notary Public within and for said County, personally came Fredericka Dennis, personally to me known to be the identical person whose name is affixed to the above Instrument as Grantor and acknowledged the execution of the same to be her voluntary act and deed for the purposes therein expressed.

In Testimony Whereof, I have hereunto subscribed my name and affixed my Official Seal at Des Moines, Iowa, on the date last above written.

[NOTARIAL SEAL.]

EZRA K. FAHLOE,
Notary Public, Polk County, Ia.

STATE OF IOWA,
Polk County, ss:

I, Mrs. Frank W. Dodson, Recorder of said County, hereby certify that the foregoing writing is a copy from the original record in my office, and of the whole thereof, and recorded in Book 141, page 16.

Dated at Des Moines, Iowa, in said County, this the 12th day of September A. D. 1912.

Mrs. FRANK W. DODSON,
Recorder.

O. K.
" " GUERNSEY, PARKER & MILLER.
WELLS H. BLODGETT.

COMPLAINANTS' EXHIBIT No. 89.

Release of Ewing, Jewett and Chandler to James F. How, Trustee.

Ewing, Jewett & Chandler

to

James F. How, Trustee.

Know All Men By These Presents: That we, Ewing, Jewett & Chandler of the City of Des Moines, Iowa, in consideration of the sum of Twenty-five hundred dollars, the receipt whereof is hereby acknowledged do hereby release all our interest in a certain lease held, owned, and enjoyed by us to Lot Seven (7) in Block Nine (9) of the original town of Ft. Des Moines, now a part of the City of Des Moines, Iowa, unto James F. How, Trustee; and we acknowledge settlement and satisfaction in full of all damages arising by reason of the condemnation and occupation of lot by the Des Moines & St. Louis Railroad, Wabash, St. Louis & Pacific R. R. St. Louis, Des Moines & Northern R. R. Co., or their assigns; And we further acknowledge from the Railroad Companies aforesaid full settlement and satisfaction of all damages arising by reason of the condemnation and occupancy of our Lumber Yard situated on Block Nine of the original town of Ft. Des Moines, now a part of the City of Des Moines, Iowa, taken possession of about the month of November 1881; And this instrument is understood to release and satisfy all

claim for damages that may have arisen or could arise by reason of the condemnation and occupancy of the ground occupied by us as a Lumber Yard as aforesaid, as well as all damage affecting our interest in and to said Lumber Yard.

EWING, JEWETT & CHANDLER.

STATE OF IOWA,

County of Polk, ss:

On this 20th day of November, 1883, before me, Hiram Y. Smith a Notary Public, within and for said County, personally came D. R. Ewing, to me personally known to be a member of the firm of Ewing, Jewett and Chandler, whose names are affixed to the above instrument as grantors, and acknowledged the execution of the same to be the voluntary act and deed of the firm aforesaid, for the purposes therein expressed.

In Testimony Whereof, I have hereto subscribed my name and affixed my seal at Des Moines, on the date last above written.

[NOTARIAL SEAL.]

HIRAM Y. SMITH,

Notary Public, Polk County, Iowa.

Filed for Record Dec. 9, 1887, at 9 o'clock A. M.

D. C. BISHARD,

Recorder.

STATE OF IOWA,

Polk County, ss:

I, Mrs. Frank W. Dodson, Recorder of said County, hereby certify that the foregoing writing is a copy from the original record in my office, and of the whole thereof, and recorded in book 196 page 238.

Dated at Des Moines, Iowa, in said County, this the 12th day of September A. D. 1912.

Mrs. FRANK W. DODSON,

Recorder.

O. K. GUERNSEY, PARKER & MILLER.

" " WELLS H. BLODGETT.

COMPLAINANTS' EXHIBIT No. 90.

Release of Maria McCauley and Husband to James F. How, Trustee.

Maria McCauley & Husband,

to

James F. How, Trustee.

For the consideration of Two Hundred and Nine and 46/100 (209.46) dollars to us in hand paid by James F. How, Trustee, the

receipt of which is hereby acknowledged, we Maria McCauley and Thomas McCauley husband and wife, do hereby release the said James F. How, Trustee, his heirs, executors, administrators and assigns from any and all liability for and on account of damages suffered or sustained by us to the following described property-to-wit,

Lots one and two (1 & 2) Block 13 in the Town of DeMoine, and now included within the corporate limits and forming a part of the City of Des Moines, Polk County, Iowa, by reason of the location, laying down and operation of a part or portion of said railroad company's line of road, over, along and upon the alley adjoining said lots upon the South and upon which said alley the said lots abut. This release being for railroad purposes only.

In witness whereof, we have hereto set our hands this 8th day of August, 1884.

MARIA McCAULEY,
THOMAS McCAULEY.

STATE OF IOWA,
Polk County, ss:

Be it remembered that on this 8th day of August, A. D. 1884, before the undersigned a Notary Public in and for said County personally appeared Maria McCauley and Thomas McCauley, her husband, to me personally known to be the identical persons whose names are subscribed to the foregoing release as releasers, and acknowledged the *the* instrument to be their voluntary act and deed.

Witness my hand and notarial seal the day and year last above written.

[NOTARIAL SEAL.]

FASHAY WALKER,
Notary Public, Polk Co., Iowa.

Filed for Record Dec. 9, 1887, at 9 o'clock, A. M.

D. C. BISHARD,
Recorder.

STATE OF IOWA,
Polk County, ss:

I, Mrs. Frank W. Dodson, Recorder of said County, hereby certify that the foregoing writing is a copy from the original record in my office, and of the whole thereof, and recorded in Book 196, Page 240.

Dated at Des Moines, Iowa, in said County, this 12th day of September A. D. 1912.

Mrs. FRANK W. DODSON,
Recorder.

O. K. GUERNSEY, PARKER & MILLER.
" " WELLS H. BLODGETT.

COMPLAINANTS' EXHIBIT No. 91.

Deed of William Dwyer and Wife to James F. How, Trustee.

Wm. Dwyer & Wife

to

James F. How, Trustee.

Filed for Record the 9th day of Dec. A. D. 1887, at 9 o'clock
A. M.

D. C. BISHARD,

Recorder,

— — —, *Deputy.*

Know All Men By These Presents: That we, William Dwyer and Ellen Dwyer, husband and wife, of the County of Polk and State of Iowa, in consideration of the sum of Two Hundred and fifty-six and 75/100 Dollars in hand paid, do hereby Quit Claim unto James F. How, Trustee, all . . . Right, Title and interest in and to the following described land, situated and lying in Polk County and State of Iowa, to-wit:

That part of the alley abutting and adjoining the East seventy-one feet of Lot No. seven Block No. 14, in the Town of DeMoine, County of Polk and State of Iowa, and now a part of the City of Des Moines, and more particularly described as follows, to-wit: That part of said alley beginning on the west line of seventh street and extending westward along the line of said Lot No. 7 a distance of seventy-one feet, it being the intention to convey the grantors interest in that part of said alley abutting and adjoining seventy-one feet of said lot extending westward from the west line of said Seventh street and no more. The grantors reserve the right to use said alley subject to the use of the same for railroad purposes as now used, being that portion of the said alley heretofore condemned by the Polk Circuit Court, January term 1884.

And the said Ellen Dwyer releases all her right to dower in and to the above described premises.

Witness our hands this 5th day of August A. D. 1884.

WILLIAM DWYER,

ELLEN DWYER,

STATE OF IOWA,

Polk County, ss:

On this 5th day of August, A. D. 1884, before me the undersigned a Notary Public in and for said County appeared the above named William Dwyer and Ellen Dwyer personally to me known to be the identical persons whose names are affixed to the foregoing instrument as grantor and acknowledged the same to be their voluntary act and deed for the purposes therein expressed.

In Testimony Whereof, I have hereto subscribed my name and affixed my official seal.

[NOTARIAL SEAL.]

J. S. CLARK,

Notary Public, Polk County, Iowa.

STATE OF IOWA,

Polk County, ss:

I, Mrs. Frank W. Dodson, Recorder of said County, hereby certify that the foregoing writing is a copy from the original record in my office, and of the whole thereof, and recorded in Book 112, Page 180.

Dated at Des Moines, Iowa, in said County, this 12th day of September, A. D. 1912.

MRS. FRANK W. DODSON,

Recorder.

O. K. GUERNSEY, PARKER & MILLER.

" " WELLS H. BLODGETT.

COMPLAINANTS' EXHIBIT No. 92.

Deed of Wells H. Blodgett and Wife to James F. How, Trustee.

Wells H. Blodgett and Wife

to

James F. How, Trustee for Solon Humphreys and Thos. E. Tutt,
Receivers of the Wabash, St. Louis and Pacific Ry. Co.

This Indenture, made on the Twentieth day of February A. D. One Thousand Eight Hundred and Eighty-five, by and between Wells H. Blodgett and Emma M. Blodgett, his wife, of the City of St. Louis and State of Missouri, parties of the first part and James F. How, Trustee for Solon Humphreys and Thomas E. Tutt, Receivers of the Wabash, St. Louis and Pacific Railway Company, of the City of St. Louis and State of Missouri, party of the second part.

Witnesseth, That the said parties of the first part in consideration of the sum of One Dollar, to them in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, do, by these presents, remise, release and forever quit claim unto the said party of the second part, the following described Lots, tract or parcels of land, lying, being and situate in the County of Polk and State of Iowa, to-wit:

Lot Number Twenty-three (23) of Brooks & Company's Addition to the City of Des Moines, containing Six and Thirty-seven one hundredths (6.37) acres more or less, and being now within the corporate limits of the City of Des Moines, Iowa.

To Have And To Hold, the same, with all the rights, immunities, privileges and appurtenances thereto belonging, unto the said party of the second part, and his successor, successors and assigns forever so that neither the said parties of the first part, nor their heirs, nor any other person or persons for them or in their name or behalf, shall or will hereafter claim or demand any right or title to the aforesaid premises, or any part thereof, but they and every of them shall, by these presents, be excluded and forever barred.

In Witness Whereof, the said parties of the first part have hereunto set their hands and seals the day and year first above written.

[SEAL.]

WELLS H. BLODGETT,

[SEAL.]

EMMA M. BLODGETT,

STATE OF Missouri,

City of St. Louis, ss:

Be it Remembered, that on this 20th day of February A. D. 1885, before me a Notary Public within and for the City of St. Louis and State of Missouri, whose Commission expires on the 20th day of June, A. D. 1885, personally appeared Wells H. Blodgett and Emma M. Blodgett, his wife, to me known to be the persons described in and who executed the foregoing instrument of writing and they severally acknowledged that they executed the same as their free act and deed.

In Testimony Whereof, I have hereunto set my hand and affixed my official seal at my office in the City and State aforesaid, the day and year first above written.

[NOTARIAL SEAL.]

GEO S. GROVER,

Notary Public, City of St. Louis, State of Mo.

I filed for record Feb. 23, 1885, at 10.55 o'clock A. M.

D. C. BISHARD,

Recorder.

STATE OF Iowa,

Polk County, ss:

I, Mrs. Frank W. Dodson, Recorder of said County, hereby certify that the foregoing writing is a copy from the original record in my office and of the whole thereof, and recorded in Book 138, page 352.

Dated at Des Moines, Ia., in said County, this 6th day of Sept. A. D. 1912.

Mrs. FRANK W. DODSON,
Recorder.

O. K.
GUERNSEY, PARKER & MILLER.
WELLS H. BLODGETT.

COMPLAINANTS' EXHIBIT No. 561.

Declaration of Trust of F. M. Hubbell.

Know All Men By These Presents, that I, F. M. Hubbell of Des Moines, Iowa, hold in trust for the Des Moines & St. Louis Railroad Company and for the Des Moines Northwestern Railway Company the title to the following Real Estate:

Lots 12 & 13 in Block 11,
Lots 10 & 11 in Block 12,
Lots 16 in Block 13,
Lot 7 in Block 16,
Lot 9 in Block 21,

all in the town of Des Moines now in the corporate limits of the City of Des Moines, Iowa.

And I agree to convey the same to said Companies, or to such person as they may direct whenever requested so to do.

In witness whereof, I have hereto set my hand this March 11, 1881.
F. M. HUBBELL.

STATE OF IOWA.

County of Polk, ss:

On this March 11, 1881, before me a Notary Public in and for said County personally came F. M. Hubbell personally to me known to be the identical person whose name is affixed to the above instrument as grantor and acknowledged the same to be his voluntary act and deed for the purpose therein expressed.

Witness my hand and seal on the date last above written,
[NOTARIAL SEAL.]

C. HUTTENLOCHER,
Notary Public, Polk Co., Iowa.

O. K.
GUERNSEY, PARKER & MILLER.
WELLS H. BLODGETT.

Additional Evidence of F. M. Hubbell.

In the District Court of the United States in and for the Southern District of Iowa, Central Division,

CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY, and THE
WARREN RAILROAD COMPANY, Complainants,

VS.

DES MOINES UNION RAILWAY COMPANY, FREDERICK M. HUBBELL,
Frederick C. Hubbell, and F. M. Hubbell & Son, Defend-
ants.

Stipulation.

It is hereby stipulated by and between the parties hereto that there shall be added to the deposition of F. M. Hubbell, taken in this case, commencing on the 31st day of May A. D. 1911, as a part of his recross examination the following:

(1.) Question. Mr. Hubbell, when you were examined as a witness in this case on the last day of May and first days of June, 1911, the following interrogatory was propounded to you:

"I will ask you whether, as Secretary of the Des Moines Union Railway Company, you now have in your possession, a certified copy, or other copy of any resolution adopted at any meeting of the stockholders or directors of the Des Moines and St. Louis Railroad Company, prior to the 8th day of April, 1890, authorizing J. F. How to be present at any meeting of the stockholders of the Des Moines Union Railway Company and vote any share or shares of stock in that Company, either for or against any proposed amendments of the Articles of Incorporation of the Des Moines Union Railway Company?"

To that interrogatory you replied as follows:

"I do not know whether I have or not. I will look for them."

Question. Now I will ask you, whether, since your former examination you have, as Secretary, made search among your papers for such a resolution as is described in the interrogatory I have just read?

Answer. Yes.

(2.) Question. Will you please state whether you have or have not, found such a resolution.

Answer. I have not.

(3.) Question. On your former examination, the following interrogatory was propounded to you:

"I will ask you whether as Secretary of the Des Moines Union Railway Company, you now have in your possession, a certified copy, or any other copy, of a resolution, adopted at any meeting of the stockholders or directors of the Des Moines and Northern Railway Company, prior to the 8th day of April, 1890, authorizing Mr. A. B. Cummins to be present at any meeting of the stockholders of the Des Moines Union Railway Company, and vote any share or shares of stock in that Company, then owned or held by, said Des Moines and Northern Railway Company, either for or against any proposed amendments of the Articles of Incorporation of the Des Moines Union Railway Company?"

To that Interrogatory you replied as follows:

"I do not know whether I have or not."

You were also asked the following question:

"Will you look and see whether you can find such a resolution or copy of such resolution, and produce it later, if you can find it?"

And to that question you replied as follows:

"Yes, I will look."

Question. Now, I will ask you, whether, since your former examination, you have as Secretary, made search among your papers for such a resolution as is described in the interrogatory I have just read?

Answer. Yes.

(4.) Question. Will you please state whether you have or have not, found such a resolution.

Answer. I have not.

(5.) Question. On your former examination, the following interrogatory was also propounded to you:

"I will ask you whether as Secretary of the Des Moines Union Railway Company, you now have in your possession, a certified copy or other copy of any resolution adopted at any meeting of the stockholders or directors of the Des Moines and Northwestern Railway Company, prior to the 8th day of April, 1890, authorizing you to be present at any meeting of the stockholders of the Des Moines Union Railway Company, and vote any share or shares of stock in that Company, that were then owned or held by said Des Moines and Northwestern Railway Company, either for or against any proposed amendments of the Articles of Incorporation of the Des Moines Union Railway Company?"

To the foregoing interrogatory you replied as follows:

"I do not know whether I have or not."

You were also asked the following question:

"Will you make an examination and see whether you can find any among the papers and records?"

And to that interrogatory you replied as follows:

"Yes, I will look in the place where we keep the proxies, and see if any of them have been saved or not."

Question. Now I will ask you whether, since your former examination, you have, as Secretary, made search among your papers for such a resolution as is described in the foregoing interrogatory?

Answer. I have.

(6.) Question. Will you please state whether you have or have not found such a resolution.

Answer. I have not.

(7.) Question. On your former examination, the following interrogatory was propounded to you:

"I will ask you whether, as Secretary of the Des Moines Union Railway Company, you now have in your possession, a written proxy, signed before the 8th day of April, 1890, of W. H. Blodgett, as a stockholder in the Des Moines Union Railway Company, by which he authorized J. F. How to attend any meeting, and vote any share or shares of stock then owned by him, either for or against any proposed amendments of the Articles of Incorporation of the Des Moines Union Railway Company?"

To that interrogatory you replied as follows:

"This meeting occurred twenty-one years ago, and I do not know whether the proxies can be found, but I am certain that such proxies were in existence, and submitted at the meeting."

Question. Now I will ask you, whether, since your former examination, you have, as Secretary, made search among your papers for such a proxy as is described in the foregoing interrogatory?

Answer. I have.

(8.) Question. Will you please state whether you have or have not found such a proxy?

Answer. I have not.

(9.) Question. On your former examination, the following interrogatory was also propounded to you:

"As Secretary of said Terminal Company, have you now in your possession, any proxy executed by J. F. How, C. M. Hays, W. H. Blodgett, or either of them, prior to April 8th, 1890, authorizing A. B. Cummins to be present at any meeting of the stockholders of the Des Moines Union Railway Company, and vote any share or shares of stock then owned or held by either of them in said Company, either for or against any proposed amendment of the Articles of Incorporation of said Company?"

To that interrogatory you replied as follows:

"I do not know whether I have or not?"

You were also, on that occasion, asked the following question:

"Will you look and see whether you have, and if so, will you produce them?"

To the last interrogatory you replied as follows:

"Yes, sir; I will look and see; you will have to send me a copy of the questions."

Now I will ask you, whether since your former examination, you have, as Secretary, made search among your papers, for such a proxy as is described in the foregoing interrogatory?

Answer. I have.

(10.) Question. Will you please state whether you have or have not, found such a proxy?

Answer. I have not.

(11.) Question. On your former examination, the following interrogatory was also propounded to you:

"Will you examine, or have an examination made, to see whether you have a proxy from General Dodge, authorizing Mr. Martin to attend that meeting that was held on the 8th day of April, 1890, and vote either for or against the proposed amendments?"

To that interrogatory you answered as follows:

"I will make an examination. In the different companies it was very common for proxies to be filed, and as a result they were put in a pigeon hole in our vault, and if they have not been destroyed, many of them can be found now."

Question. I will ask you whether, since your former examination, you have, as Secretary, made search among your papers for such a proxy as is described in the foregoing interrogatory?

Answer. I have.

(12.) Question. Will you please state whether you have or have not found such a proxy?

Answer. I have not.

The foregoing addition to the said depositions shall have the same force and effect in all respects as if it had been taken and returned with the said deposition in the first instance as a part thereof.

Dated this 23 day of October, A. D. 1912.

WELLS H. BLODGETT,

J. L. MINNIS,

J. C. COOK,

R. RYAN,

Solicitors for Complainants.

GUERNSEY, PARKER & MILLER,

Solicitors for Defendants.

Stipulation of Counsel.

In the District Court of the United States in and for the Southern District of Iowa, Central Division.

CHICAGO, MILWAUKEE & ST. LOUIS RAILWAY COMPANY, and the
WABASH RAILROAD COMPANY, Complainants,

vs.

DES MOINES UNION RAILWAY COMPANY, FREDERICK M. HUBBELL,
FREDERICK C. HUBBELL, and F. M. HUBBELL & SON, Defendants.

*Depositions on the Part of Complainants.**Stipulation.*

It is hereby stipulated by the parties, that complainants may this day take the testimony of the witnesses Mark L. Mitchell, William H. Moorehead, and W. L. Finnicum, before J. P. Blaise, who is hereby agreed upon as a commissioner for taking the same and that the transcript of the shorthand notes of the same duly certified to by the said J. P. Blaise, may be used in evidence on the trial of this cause, the same as though it was taken under formal notice, and the parties waive any irregularity in the method and manner of taking the same.

It is further stipulated that the signing of the deposition and the shorthand notes by the witnesses is waived.

Appearances:

J. C. Cook and Robert Ryan, Attorneys for Complainants.
Parker, Parrish & Miller, Attorneys for Defendants.

Caption.

Depositions of witnesses, produced, sworn, and examined in pursuance of the stipulation hereinbefore set forth, at Des Moines, in the office of Ryan & Ryan, Manhattan Building, in the County of Polk and State of Iowa, before me, J. P. Blaise, a commissioner agreed upon by the parties, in a certain action now pending in the District Court of the United States in and for the Southern District of Iowa, Central Division, wherein Chicago, Milwaukee & St. Paul Railway Company, and the Wabash Railroad Company, are complainants, and Des Moines Union Railway Company, Frederick M. Hubbell, Frederick C. Hubbell and F. M. Hubbell & Son are defendants, on behalf of said complainants, this 31st day of December, 1912.

MARK L. MITCHELL, being first duly sworn on the part of the complainants, testified:

Int. 1. Where do you reside and what is your occupation?

Ans. I reside in Chicago and am a civil engineer.

Int. 2. And are employed by whom?

Ans. By the Chicago, Milwaukee & St. Paul Railway Company.

Int. 3. Will you look at the two maps or blueprints I hand you, and which the commissioner will mark as Exhibits "A-Y" and state whether that was a map made by you from actual survey and observation, and after consultation with the chief engineer of the Des Moines Union Railway Company, and whether it shows correctly that part of the city of Des Moines covered by it, and shows correctly the railway tracks known as those of the Des Moines Union Railway Company, and the right of way and tracks of the Des Moines Terminal Company?

Mr. Parrish: Objected to on the part of the defendants in so far as the question seeks to show the title to the Des Moines Union Railway Company and the Des Moines Terminal Company, to the right of way lands involved, for the reason that it is not the best evidence.

Ans. There are two maps here. Yes, I made these maps from actual survey and observations of the ground and consultation with the chief engineer of the Des Moines Union Railway. The maps show correctly the part of the city embraced by them, and show the tracks of the Des Moines Union Railway, which are colored in red on this map, and show the tracks of the Des Moines Western Railway, colored in green, and show the tracks and the property of the Des Moines Terminal Company, in yellow, and also, they show in black certain tracks which are located on the ground of the Des Moines Union Railway Company, but I am told by the engineer of the Des Moines Union Railway Company, that these certain tracks shown in black are the property of the Chicago Great Western Railway Company; and also, there is one short track shown, colored alternately red and black. This track, I understand, from what I am told by the chief engineer, is owned jointly by the Des Moines Union Railway and the Chicago Great Western Railway; I mean the Des Moines Union Railway Company.

Int. 4. Did you get your information as to the ownership of right of way from the records in the Polk County Recorder's office, and from observation, and from the chief engineer of the Des Moines Union Railway Company?

Mr. Parrish: Objected to on the part of defendants as being incompetent, immaterial, hearsay and not the best evidence of the ownership of the right of way.

Ans. I obtained this information as to the right of way of the Des Moines Terminal Company, both companies, partly from both sources mentioned by you, but confirmed by comparison and consultation with the chief engineer of the Des Moines Union Railway, with whom I had gone over the matter, and verified by independent observation and search.

Int. 5. Did you also go upon the ground and follow the various tracks of the Des Moines Union and spur tracks leading therefrom?

Ans. I did.

Int. 6. And did this also confirm your map, and what you learned from the records in the recorder's office, and what you learned from the engineer of the Des Moines Union?

Mr. Parrish: Objected to on the part of defendants as calling for a conclusion and the opinion of the witness, and not the best evidence of title.

Ans. What I found on the ground confirmed my information I obtained from the sources before mentioned.

Int. 7. State whether or not, after your map had been prepared you went over the same in detail with the chief engineer of the Des Moines Union Railway Company, and made such corrections or changes as he suggested in order to make it conform to his knowledge?

Mr. Parrish: Objected to on the part of defendants as being incompetent, immaterial, hearsay and not the best evidence.

Ans. After finishing the map, I compared it, or rather I took it and saw the chief engineer of the Des Moines Union Railway, and he went—

Int. 8. You mean you saw him in his office?

Ans. In his office. And he went over this map in detail and suggested some changes to be made, that he thought should be made in order to make it correct. I made those changes on the map.

Int. 9. Just as he suggested?

Ans. As he suggested.

Int. 10. When did you have this consultation with the chief engineer of the Des Moines Union and complete the map as it now is?

Ans. I had the last consultation yesterday, and I completed the map as it now is yesterday.

Cross-examination.

By J. L. Parrish, Esq.:

C. Int. 1. Did you attempt to determine which pieces these companies were in possession of by warranty deed, and which they were in possession of by condemnation proceedings, and which they were in possession of by right-of-way deed, or under some other sort of a contract; did you go into that question?

Ans. Not in all cases.

C. Int. 2. You didn't attempt to distinguish between those on your maps, as I understand it?

Ans. No. It shows the property of the Des Moines Union, but it is not brought out by the color.

C. Int. 3. Does the map of the Des Moines Union pretend to distinguish between these pieces of right of way, which were acquired by warranty deed and those which were acquired by right-of-way deed, and those acquired by condemnation proceedings and those acquired by some other sort of a contract?

Ans. These maps do not show the manner of conveyance, except in cases where we have sheriff deeds; you will notice that fact on the map.

Witness excused.

WILLIAM H. MOOREHEAD, being first duly sworn on the part of the complainants, examined by J. C. Cook, Esq., testified:

Int. 1. What is your age and present occupation?

Ans. Well, I am 52 years old and am a locomotive engineer.

Int. 2. Where do you reside?

Ans. At 668 29th street, Des Moines, Iowa.

Int. 3. Are you now in the employ of the Chicago, Milwaukee & St. Paul Railway Company as a locomotive engineer?

Ans. Yes, sir.

Int. 4. When did you first enter the railroad service for any company?

Ans. Well, my first railroad service—I was in Wisconsin. I done a little work there; that is, in shop work; I had never done any road work.

Int. 5. When did you first enter the service of the Des Moines Northwestern Railway Company, on what is now the Des Moines and Fonda line?

Ans. Well, when I first went to work, it was at Waukeez, that was the short line, working there in the round house; it run between Adel and Waukeez then.

Int. 6. What year was that in?

Ans. I think that was in 1881 that I went to work there; I am not positive; I think it was in 1881.

Int. 7. To what point was that road then extended from Adel northward?

Ans. It was extended west, in fact it was extended both ways. It was built in here to Clive, I think; built to Clive and extended west to Pandora and from Pandora to Jefferson. I was transferred from Waukece to Pandora, and then from there to Jefferson; that was a kind of a terminal there.

Int. 8. During this time you was at work caring for engines, I understand?

Ans. Yes, sir. I broke a little while on a construction train, too, in the meantime. The fact is, I didn't have any permanent job of any kind. I broke on a construction train a while at Jefferson.

Int. 9. While you were braking on the construction train, did you run into Des Moines?

Ans. No, sir, I did not. We was hauling supplies; Jefferson was the distributing point—hauling supplies from there north.

Int. 10. When did you first begin to work as a fireman?

Ans. I think it was in the fore part of 1882, I think; I am not positive on these dates. It has been long ago; I am not positive on the dates.

Int. 11. Was that soon after the line was extended into Des Moines?

Ans. Well, I couldn't say for that. When I went to firing I fired on one of the work trains out there; I was quite a while before I got into Des Moines. Maybe four or five months; I presume such a matter as that; I don't remember just exactly the time.

Int. 12. Did you commence running into Des Moines in the year 1882?

Ans. That I couldn't say.

Int. 13. About that time?

Ans. About somewhere in 1882 or in 1883; I couldn't say exactly for the date.

Int. 14. Was it either in 1882 or 1883?

Ans. Well, it might have been in 1883; I couldn't say; 1882 or 1883. I know I was quite a while on the front before I got in here at all; I was nothing but a new man.

Int. 15. When you began running into Des Moines were freight and passenger trains running between Des Moines and Jefferson?

Ans. Yes, sir; they had put on service between Des Moines and Jefferson; they had put on a passenger train there and also a freight train.

Int. 16. Which did you fire one, a freight or passenger?

Ans. A freight.

Int. 17. To what point in Des Moines were the passenger trains running when you first began firing, where was the depot?

Ans. The depot was an old building on the corner of Fifth and the track, where the new depot is now; there was an old building right on the corner there.

Int. 18. Did all passenger trains run to that point from the Fonda line?

Ans. All passenger trains ever I was on did.

Int. 19. How were the tracks in Des Moines when you began firing, as to having three rails laid, so as to accommodate both standard gauge and narrow gauge engines and cars, were there three rails laid?

Ans. Yes, sir; there were three rails. I think there was three rails laid as far as 16th street, down there close to the waterworks.

Int. 20. And how far east did those three rails extend with reference to the east city limits, or the packing house?

Ans. Well, in later years I worked down, went down as far as what was known as the old distillery.

Int. 21. Is that where the present packing house is?

Ans. I can't say; I haven't been in that part of the city for fifteen years; I couldn't say; there used to be a distillery there.

Int. 22. Was that close to the east city limits?

Ans. I don't know where that was. I was down as far as the starch works.

Int. 23. About how far east of the river did this third rail extend?

Ans. Oh, the third rail extended quite a ways down the Washburn; there was an old gravel pit down there.

Int. 24. How far east was that?

Ans. I don't remember how far it is down there; it might be a mile or a mile and a half. It has been so long since I have been down there; I couldn't say just the distance. It was down pretty close opposite where the starch works were; there was a gravel pit in there.

Int. 25. The starch works now have been burnt down?

Ans. They have been burned down.

Int. 26. That you say was about a mile and a half east of the river?

Ans. Well, it might be such a matter; I couldn't say exactly the distance.

Int. 27. Of what gauge were the Boone and Fonda lines when you first began to run on trains?

Ans. Narrow gauge.

Int. 28. What gauge was the Albia line, or what was known as the Wabash?

Ans. Standard gauge.

Int. 29. Were these third rails laid substantially over the property over the city so that both narrow gauge and standard gauge could run over them?

Ans. So far as I know. Of course, the yard was small those days.

Int. 30. They were generally three-rail tracks?

Ans. Yes, sir.

Int. 31. Now, were these three-rail tracks maintained substantially over the whole, what is now the Des Moines Union Terminal, or Des Moines Union tracks, between the starch works in the east part of the city, and the waterworks in the west part of the city, until Boone and Fonda lines were both changed to standard gauge?

Ans. Well, I don't remember whether there was a third rail or not down to the packing house or the starch works. There was a narrow gauge track down there; I don't remember whether there was a third rail down there or not.

Int. 32. But a narrow gauge track was down there.

Ans. Yes.

Int. 33. So the narrow gauge engines could run clear down to the starch works?

Ans. Yes, sir.

Int. 34. Do you know when the Boone line was changed to a standard gauge?

Ans. Well, I am not positive, but I think it was along in 1881, I think.

Int. 35. You mean, 1891?

Ans. 1891, I should say.

Int. 36. When was the Fonda line changed to a standard gauge?

Ans. I think that was in the fall of 1892; as near as I can remember it was in the fall of 1892.

Int. 37. Have you been continuously running on the Boone and Fonda line since you began as a fireman on the Fonda line in 1882 or 1883?

Ans. Yes, sir.

Int. 38. And are you still running?

Ans. Yes, sir.

Int. 39. Now, during all that time that you have been running on the road, have any railroad tracks or railroad terminals been used in connection with that Boone or Fonda line except the tracks and terminals now known as those of the Des Moines Union, in Des Moines?

Ans. I never ran on any but these. I don't know of any. I don't know of any but these at the present time.

Int. 40. Were there any others used by the Boone and Fonda line?

Ans. I have never known of any; I never run into any but the present terminal here.

Int. 41. Have you known of any other tracks or terminals in Des Moines being used in connection with the Boone and Fonda line, except those now known as the Des Moines Union?

Ans. No, sir.

Int. 42. Has either the Allua line or Boone line or Fonda line ever had the use of any terminals or tracks in the city of Des Moines, except those now known as the Des Moines Union?

Ans. Not as I know of.

Cross-examination.

By J. L. Parrish, Esq.:

C-Int. 1. Now, Mr. Moorhead, as I understand it, the passenger depot has always been located substantially where it is now located, on Fifth street?

Ans. Yes, sir; not this same building.

C-Int. 2. But substantially the same location?

Ans. Yes, the same location.

C-Int. 3. And in the operation of passenger trains on the Boone and Fonda line, they have always come down to the depot?

Ans. Yes, sir.

C-Int. 4. The same as they do now?

Ans. Yes, sir.

C-Int. 5. And this is true and has been true ever since you commenced working or running in here?

Ans. Yes, sir.

C-Int. 6. Now, the terminal for the freight trains on the Des Moines and Boone line or the Fonda and Boone line, has always been out somewhere in the vicinity of the waterworks out on the west end?

Ans. Out on the west end there.

C-Int. 7. So that when they brought in a train from Boone or Fonda, a freight train, why they would stop at these terminals, on some of those tracks out there in the vicinity of Twelfth street or west of there, and the trains would then be broken up and switched to the various places where the cars should go?

Ans. Yes, sir.

C-Int. 8. That has always been the practice?

Ans. Yes, sir.

C-Int. 9. Now, originally that switching was done by the Des Moines and Northwestern employees, or Des Moines Northwestern employees, originally?

Ans. Yes, sir.

C-Int. 10. And there came a time, however, when that switching was done by the Des Moines Union?

Ans. Yes, sir.

C-Int. 11. Of course, you do not remember, I suppose, you don't

remember so that you could give us the date when that change was made?

Ans. No, I couldn't.

C-Int. 12. And you, since that change was made, in operating over the terminal, you operated under a Des Moines Union time card?

Ans. Yes, sir.

C-Int. 13. That change was made, wasn't it, before the change in the gauge in the Boone and Fonda line?

Judge Cook: This is objected to as not cross-examination.

Mr. Parish: I guess I will withdraw the question.

C-Int. 14. You say, that since the change was made you operated inside of the terminals under a Des Moines Union time card, and by that you mean, do you not, that the operation of your train within the terminals was controlled by the rules printed on the time card and with reference to other trains appearing on the time card, that is what you mean?

Judge Cook: Objected to as not cross-examination.

Ans. Why, yes. We were altogether under Des Moines Union rules under 28th street now, under this time card. They have got their own rules and cards, and we are governed by Des Moines Union rules.

Witness Examined.

W. L. FENNER, being duly sworn on the part of complainants, examined by J. C. Cook, Esq., testified:

Int. 1. What is your occupation and where do you reside?

Ans. I am employed at present as passenger conductor on the Chicago, Milwaukee & St. Paul Railway, and I might call Des Moines my residence, I guess.

Int. 2. When did you first enter the service of any railroad company that operated either the Boone line or the Fonda line into Des Moines?

Ans. I went to work at Des Moines on the present place where I am working now, the 2d day of July, 1885.

Int. 3. That then would be for the Des Moines Northwestern Railway Company?

Ans. At the time I went to work the Wabash was operating that, I fitted to the Wabash.

Int. 4. It was then operating the Fonda line?

Ans. Yes, sir.

Int. 5. At that time, to what point in Des Moines did you run your passenger trains?

Ans. The trains I worked on, the original starting point of them from Des Moines, was at the place where the present new station now stands on Fifth street, and in coming from Fonda I came to that point.

Int. 6. When did you first begin running on the Boone line?

Ans. Well, I only made a few trips on the Boone line. I never worked but little from there; I couldn't say when.

Int. 7. When you began working on the Fonda line, were there any terminals or tracks used in the city of Des Moines, by either the Boone line or Fonda line, or in connection with either line, except those that are now known as the Des Moines Union tracks and terminal facilities?

Ans. Not to my knowledge.

Int. 8. If they had been used, you would have observed it, wouldn't you?

Ans. I think so; yes, sir.

Int. 9. Now, from that time until now, has there ever been any time when any tracks or terminals in the city of Des Moines were used by or in connection with either the Boone or Fonda lines, except those tracks and terminal facilities now known as the Des Moines Union?

A. Not to my knowledge.

Int. 10. If there had been any would you have observed it?

Ans. Well——

Int. 11. —I mean regularly used?

Ans. There might have been and there might not have been. I couldn't answer that question, Judge, because I don't know.

Int. 12. Do you know of any having been used.

Ans. No, I do not.

Int. 13. Yes you were running constantly from that time on until now?

Ans. Yes, sir.

Int. 14. In the train service?

A. Yes, sir.

Int. 15. And all trains have run to and from where the present Union Depot is located at Fifth street in West Des Moines?

Ans. The trains that I have been on, the passenger trains have.

Cross-examination.

By J. L. Parrish, Esq.:

C-Int. 1. As I understand it, the passenger station has always, during your time been located substantially where it is now located, at Fifth street?

Ans. Since I have been working there.

C-Int. 2. During all that time the Boone and Fonda passenger trains have run to and from that depot?

Ans. Yes, sir.

C-Int. 3. Now, freight trains that were brought into Des Moines from the Boone and Fonda line, always stopped out in the west part of the yard somewhere?

Ans. Yes, sir, just east of the waterworks.

C-Int. 4. Then they were broken up there and switched around over the yards as occasion might demand?

Ans. Yes, sir.

C-Int. 5. That is done by switch engines?

Ans. Yes, sir.

C-Int. 6. And, of course, they have been brought in by what you call road engines?

Ans. Yes, sir.

Redirect examination:

Int. 1. When you began working in 1885, were there or were there not three rails laid substantially over the entire yard in the city of Des Moines, so as to accommodate both narrow and standard gauge cars and engines?

Ans. Over the part of the yard I was familiar with there was. I didn't have any occasion to go east of where the present passenger station now stands.

Int. 2. Or east of the river?

Ans. No.

Int. 3. Did you observe while you were working, from 1885 to 1890, say, occasionally observe narrow gauge cars run across the river to the east side?

Ans. Well, you could see them starting with narrow gauge cars, but I don't know where they took them to. They started east, but I don't know where they went to, because I never had occasion to go across there. My duties did not take me beyond the present site of the passenger station.

Int. 4. Do you know when the Boone line was changed to a standard gauge?

Ans. If I remember rightly, to the best of my knowledge, I think it was in 1891.

Int. 5. When was the Fonda line changed to a standard gauge?

Ans. That was changed, if I remember correctly, the following year, 1892.

Int. 6. Then after both of these lines were changed to a standard gauge, state whether or not the third rail was taken up in Des Moines?

Ans. It was taken up later on, but I couldn't say when it was done.

Recross-examination:

C-Int. 1. Have you always been a passenger conductor?

Ans. No, sir; I have been running a passenger train a little better than twenty years. I was a freight conductor for five or six years, I guess. I started as a freight brakeman; then broke on a passenger train; then I was promoted and I went to braking again on a freight train, and as a freight conductor and ran a local freight train for from four to six years.

C-Int. 2. You never was engaged in the switching service here?

Ans. No, sir.

C-Int. 3. Therefore you never had any occasion to go around over the terminals, except as you came into the depot and went out with your passenger train?

Ans. Yes, sir; that is all.

C. Int. 4. In moving your trains within the terminals here, you have always moved under the Des Moines Union time card?

Ans. Not always. There was a time, if I remember correctly, that we were not governed by a book of rules or time card of the Des Moines Union Railway, but I can't say as to when that was. That was in the early stages of my service over there.

C-Int. 5. In moving your trains in and out of the terminal, in your experience, the trains you moved, you always had some particular track assigned for the movement of those trains, had you.

Ans. I don't understand you exactly.

C-Int. 6. From the depot, extending west, is there in the terminal, what is known as the main line?

Ans. There is a main line going in and out.

C-Int. 7. And in moving your trains in and out, you moved over that main line usually?

Ans. Yes, going in and out, usually.

C-Int. 8. You always done that, unless something happened to block it?

Ans. I am speaking of passenger trains.

C-Int. 9. Well, the freight trains have been brought in always to the west end of the yard and there broken up?

Ans. Yes, sir.

Redirect examination:

Int. 1. Freight trains coming in from the west would always come to a point *each* of 16th street, before the road engines were detached, as far as you know?

Ans. Yes, sir, when I was running, we would come to a point near the waterworks and head in on the sidetracks.

Int. 2. You would leave your train on the sidetracks east of 16th street, or *each* of the waterworks?

Ans. Yes, sir.

Witness Excused.

Judge Cook: The complainants now offer and introduce in evidence a certified transcript of the Articles of Association of the Des Moines Terminal Company.

Mr. Parrish: Objected to on the part of the defendants as being incompetent, immaterial, irrelevant, not properly identified and not the best evidence.

Judge Cook: The complainants also introduce in evidence the two maps or blueprints, identified by the witness, Mark L. Mitchell, and marked by the Commissioner as "Exhibit A-Y."

Mr. Parrish: The defendants object to the maps "Exhibit A-Y," in so far as they purport to show the title of the properties referred to, and the manner in which the same were obtained, and the character of such title, as not the best evidence.

The Commissioner: The certified transcript of the Articles of Association of the Des Moines Terminal Company, above offered, is hereto attached and returned with these said depositions. The two maps, "Exhibit A-Y," are detached, but returned herewith to the clerk of said U. S. District Court.

Mr. Parrish: It is conceded that the complainants do not now have any right to use any terminal property or railway, within the city limits of Des Moines, except such rights as they may have, if any, in the terminal property involved in this suit.

Commissioner's Certificate.

I, J. P. Blaise, Commissioner, and a Notary Public within the county of Polk and state of Iowa, hereby certify:

That in pursuance of the stipulation hereinbefore first set forth, I caused to come before me at the office of Ryan & Ryan, Manhattan Building, Des Moines, Polk county, Iowa, on the 31st day of December, 1912, the witnesses, Mark L. Mitchell, William H. Moorehead and W. L. Finnicum.

That said witnesses were then and there by me duly sworn, and their testimony was correctly taken down in shorthand by me. That the signing of the shorthand notes or the transcript thereof by each of said respective witnesses was waived by the parties.

I further certify that the translation of my said shorthand notes so taken is a full, true and complete translation thereof.

The said depositions, together with the certified copy of the Articles of Association and the two maps, "Exhibit A-Y," introduced on the part of the complainants, are herewith returned to the clerk of the district court of the United States in and for the Southern District of Iowa, Central Division, at Des Moines, Polk county, Iowa.

Witness my hand and notarial seal this 31st day of December, 1912, at Des Moines, Polk county, Iowa.

J. P. BLAISE,
*Commissioner, and Notary Public in and
for Polk County, Iowa.*

Articles of Incorporation of the Des Moines Terminal Company.

Knew All Men By These Presents: That we, F. M. Hubbell, H. D. Thompson and C. Huttonlocker, do hereby associate ourselves together for the purpose of forming a corporation for pecuniary profit under the provisions of Chapter one (1) Title nine (9) of the Code of 1897 of Iowa, and amendments thereto, and to that end do hereby adopt, acknowledge and publish the following Articles of Incorporation, to-wit:

Article I. The name of this corporation shall be "Des Moines Terminal Company" and its principal place of business shall be at the city of Des Moines, county of Polk and state of Iowa.

Article II. The objects of this corporation and the general nature of the business to be transacted by it shall be the acquisition of railways and railway property including the stock, bonds and debentures of any other railroad or railroads in and about the city of Des Moines, Iowa, and in the state of Iowa, and in other parts of the United States of America, of every kind and description, by purchase, lease or construction, and the ownership, maintenance and operation thereof, including the purchase, construction, lease, ownership, maintenance, operation and use of depots, union depots, freight houses, union freight houses, railway and repair shops, stock yards, and union stock yards, and such other real and personal property as it may deem needful or convenient for the carrying on of its business including the furnishing of terminal facilities and the performance of terminal and switching services for other persons, firms, or corporations. It shall have power to sell, mortgage, lease or otherwise dispose of its property or any part thereof, or interest therein and shall possess all other powers conferred upon railway corporations and upon corporations for pecuniary profit by the laws of the state of Iowa, including the power to condemn private property for its use.

Article III. The capital stock of this corporation shall be two hundred thousand dollars (\$200,000) divided into shares of one hundred dollars each. Said shares shall be paid for when issued either in money or in property taken at its fair market value.

All shares of stock not subscribed for and taken at the time of the organization of this corporation, shall be issued only when authorized by resolution of the board of directors adopted at a regular or special meeting by the vote of the majority of all the members of said board.

It shall not be necessary, in order to enable this corporation to carry on the business for which it is organized, that all of its capital stock be subscribed or taken.

Article IV. This corporation shall commence upon the date the certificate of authority is issued to it by the secretary of the state of Iowa, and shall continue for fifty (50) years, with the right of renewal as now or hereafter provided by the statutes of the state of Iowa.

Article V. The affairs of this corporation shall be managed and its business conducted by a board of directors composed of not more than nine persons nor less than three persons, who shall be elected by the stockholders at their regular annual meetings to be held at the office of the company in Des Moines, Iowa, on the first Thursday of January of each year. All directors shall hold their offices for one year and until their successors are duly elected and qualified. Until the first annual meeting of the board of directors of this corporation shall consist of F. M. Hubbell, H. D. Thompson and C. Huttenlocker.

The board of directors shall have power to issue bonds and to authorize the execution of mortgages or deeds of trust securing the same, to enter into contracts, to purchase real and personal property, to construct buildings, to make leases, to authorize the institution of condemnation proceedings, and to do all such other acts and things as may be proper or necessary for the corporation to do. In order to facilitate the transaction of business, power is hereby expressly conferred upon each of the directors to delegate by written authority some other person to act or vote for him and in his stead at any meeting of the board of directors, provided, the said authority shall be filed with the secretary of this corporation at or before the time the meeting convenes.

The board of directors shall fill all vacancies occurring in the board until the next annual meeting of the stockholders and shall elect the officers of the corporation hereinafter provided for.

Article VI. The officers of this corporation shall be a president, vice-president, secretary and treasurer, of which the offices of secretary and treasurer may be filled by one person. All of said officers shall be elected annually from the persons composing the board of directors, as hereinbefore provided. Said officers shall hold their

offices for one year and until their successors are duly elected and qualified. They shall exercise such powers and be charged with such duties as usually pertain to their respective offices. Until the first annual meeting of this corporation, the officers shall be F. M. Hubbell, president; H. D. Thompson, vice-president; C. Huttenlocher, secretary and treasurer.

Article VII. The board of directors shall hold regular meetings on the first Tuesday of each month. Special meetings of the board of directors may be called by the president, or in the case of his absence or disability, by the vice-president, and shall be called upon request preferred in writing by two members of the board.

Article VIII. Annual meetings of the stockholders shall be held on the first Thursday of January of each year, commencing with the years 1903. Special meetings of the stockholders may be called at any time by the president, or by two directors, but at least ten day's notice of all special meetings shall be given to each stockholder by mailing him at his address, as shown by the books of the corporation, a notice stating the time and place of such meeting.

At all meetings of the stockholders, each stockholder shall be entitled to cast one vote for each share of stock owned by him as shown by the books of the corporation, and said vote may be cast either in person or by proxy, but if by proxy, written authority therefor must be [filled] with the secretary at or before the time the meeting convenes.

Article IX. The private property of the stockholders of this corporation shall be exempt from liability for the debts and undertakings of the corporation.

Article X. The highest amount of indebtedness to which the corporation may at any time subject itself, shall be the amount authorized by law.

Article XI. Any of the articles, except the ninth exempting the property of stockholders from liability for corporate debts, may be amended by a vote of a majority of all the stock then outstanding in favor thereof, at any annual meeting of the stockholders or at any special meeting of the stockholders called therefor, but of each special meeting a notice, containing the proposed amendment, shall be mailed to each stockholder at his address, as shown by the books of the corporation.

Executed at Des Moines, Iowa, this 29th day of May, A. D. 1902.

F. M. HUBBELL.
H. D. THOMPSON.
C. HUTTENLOCKER.

STATE OF IOWA,
Polk County, ss:

Be it remembered, that on this 29th day of May, A. D. 1902, before me, the undersigned, a Notary Public in and for Polk County, Iowa, personally came F. M. Hubbell, H. D. Thompson and C. Huttenlocker to me personally known to be the identical persons whose names are subscribed to the foregoing Articles of Incorporation, as incorporators, and severally acknowledged the execution of the same to be their voluntary act and deed for the purposes therein expressed.

In Testimony Whereof, I have hereunto set my hand and affixed my Notarial Seal at Des Moines, Iowa, the date last above written.

[Seal Polk County, Iowa.]

A. C. MORRISON,
Notary Public in and for Polk County.

Filed for record May 29, 1902, at 3:55 o'clock p. m. and recorded in Book 15, page 536.

JOHN P. COOK,
Recorder.

STATE OF IOWA, ss:

Filed for record in the office of the Secretary of State June 6, A. D. 1902, and recorded in Book P-3, page 432.

W. B. MARTIN,
Secretary of State.
D. A. HITES,
Deputy.

Des Moines Terminal Company.

Amendment.

Know All Men By These Presents:

That at a special meeting of the stockholders of the Des Moines Terminal Company duly held at its office in the city of Des Moines, Iowa, in accordance with its articles of incorporation, on the 4th day

of June, A. D. 1907, of which meeting all of the stockholders of the said corporation had due notice and at which meeting all of the shares of the capital stock of the said corporation, were duly and fully represented either in person or by proxy, the articles of incorporation of the said Des Moines Terminal Company were amended by striking out the first sentence of Article 3 of the said articles of incorporation the words and figures "two hundred thousand dollars (\$200,000)," and adopting and substituting in lieu thereof the words and figures "five hundred thousand dollars (\$500,000)," and the president and secretary of said corporation were at said meeting duly authorized and empowered to execute, acknowledge and record said amendment and publish notice thereof in the manner provided by the laws of the state of Iowa. Said Article Three (3) of said articles of incorporation as amended, to hereafter read as follows, viz:

Article III. The capital stock of this corporation shall be Five Hundred Thousand Dollars (\$500,000), divided into shares of One Hundred (100) Dollars each. Said shares shall be paid for when issued, either in money or in property taken at its fair market value. All shares of stock not subscribed for and taken at the time of the organization of this corporation shall be issued only when authorized by resolution of the board of directors adopted at a regular or special meeting, by the vote of the majority of all of the members of said board. It shall not be necessary in order to enable this corporation to carry on the business for which it is organized, that all of its capital stock be subscribed or taken.

In witness whereof and by virtue of the authority aforesaid, the undersigned, president and secretary respectively, of the Des Moines Terminal Company have hereunto set their hands and affixed the seal of the said corporation at Des Moines, Iowa, this 4th day of June, A. D. 1907.

[CORPORATE SEAL.]

F. M. HUBBELL,

President.

C. HUTTENLOCKER,

Secretary.

STATE OF IOWA,

Polk County, ss:

Be it remembered that on this 4th day of June, A. D. 1907, before me, the undersigned, a Notary Public in and for Polk county, Iowa, personally appeared F. M. Hubbell and C. Huttenlocker, president and secretary respectively of the Des Moines Terminal Company, personally known to me, who being by me each duly sworn, did say

that they are the president and secretary respectively of the Des Moines Terminal Company, a (corporation,) and that the seal affixed to the annexed instrument is the corporate seal of the said corporation, and that said instrument was signed and sealed in behalf of the said corporation by authority of its stockholders, and the said F. M. Hubbell and C. Huttenlocker acknowledged the said instrument to be their voluntary act and deed and the voluntary act and deed of the said corporation by them, its president and secretary, thereunto duly authorized.

In witness whereof I have hereunto set my hand and affixed my notarial seal the day and year last above written.

WALTER MAUTHE,

[SEAL.] *Notary Public in and for Polk County, Iowa.*

POLK COUNTY, IOWA:

Filed for record June 12, 1907, at 10:55 o'clock a. m., and recorded in Book 19, Page 523.

Mrs. FRANK W. DODSON,

Recorder,

By GEO. B. HEBURN,

Deputy.

STATE OF IOWA, ss:

Filed for record in the office of Secretary of State, June 20, A. D. 1907, and recorded in Book N-4, Page 371.

W. C. HAYWARD,

Secretary of State.

STATE OF IOWA:

Secretary of State.

I, W. C. Hayward, Secretary of State of the state of Iowa, and keeper of the corporate records thereof, do hereby certify that the attached instrument in writing is a true and correct copy of the Articles of Incorporation and Amendment to Articles of Incorporation of the Des Moines Terminal Company, of Des Moines, Iowa, as the same appear of record in this office.

In testimony, whereof, I have hereunto set my hand and affixed the official seal of the Secretary of State of the state of Iowa. Done at Des Moines, the capital of the state, this 15th day of November, 1912.

W. C. HAYWARD,

Secretary of State.

[SEAL.]

In the District Court of The United States, Southern District
of Iowa, Central Division.

THE CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY, and
THE WABASH RAILROAD COMPANY, Complainants,

VS.

THE DES MOINES UNION RAILWAY COMPANY, FREDERICK M.
Hubbell, Frederick C. Hubbell, and F. M. Hubbell & Son, Defend-
ants.

Admission of Respondents as to How Letter.

It is admitted by defendants that Exhibit 94, attached hereto, is a correct copy of a letter from James F. How, acting general manager of the Wabash, St. Louis & Pacific Railway Company, to Geo. S. Grover, one of the general attorneys of said corporation, and that the signature on said letter and the postscript is in the handwriting of the said How, and that the same may be considered as offered and admitted in evidence in said cause on the part of complainants, subject, however, to all and every objection thereto on the part of the defendant that might be made or urged against the original, it being the intention that the copy shall be given the same effect as evidence as would be given the original of said letter.

Dec. 31, 1912.

PARKER, PARRISH & MILLER,
N. T. GUERNSEY,

For Defendants.

EXHIBIT 94.

Wabash, St. Louis & Pacific Railway Company.

Office of General Manager.

St. Louis, March 25, 1881.

Geo. S. Grover, Esq.,
Att'y's Office.

DEAR SIR:

We are buying considerable property in Des Moines. The vouchers for same are approved in this office and paid through treasurer. This property is purchased in the names of different parties or in my name as trustee and will be finally transferred to me as trustee. I wish you to arrange to keep an account of all these matters in your office. See that the deeds are all properly made out, that the description of the property is right and that certificates from Parsons & Runnells certifying to the correctness of the title are on file, that the deeds are duly recorded in fact everything that is necessary to show a complete record in connection with the property.

(2)

I enclose some certificates that have arrived after vouchers have been made. Other certificates are attached to the vouchers. We have a tracing of the property which is purchased or is intended to be purchased in this office and you can have copy of same made.

This is a matter involving over \$100,000.00 and I rely upon you to see that it is correctly kept.

Yours truly,

JAMES F. HOW,
Actg. Gen. Mgr.

Also please make out a certificate that the property deeded to me as trustee, describing same, is the property of the Des Moines & St. Louis and Des Moines & North Western R. R. Co.